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ABSTRACT

This program guide provides the information a study circle will need to discuss the death penalty. It offers a balanced, nonpartisan presentation of a spectrum of views. The four positions and the supporting material are designed for use in a single-session program of approximately 2 hours. The four positions are as follows: (1) the death penalty should be abolished because it is cruel and unusual; (2) the death penalty should be abolished because it is unjustly applied; (3) the death penalty should be retained because justice requires it; and (4) the death penalty should be retained and made easier to implement because it serves a useful purpose. Participant materials include a framework for discussion, the legal background, summary of the four positions, an examination of the positions with underlying principles and assumptions (rejoinders in italics), and background reading. The materials provided for the leader's use include suggestions for leading this discussion, suggested discussion questions, and general suggestions for leading a study circle. Other contents include suggestions for participants and a follow-up form. (YLB)

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ED 364 478

STUDY CIRCLES RESOURCE CENTER

Public Talk Series

THE DEATH PENALTY IN THE UNITED STATES

July 1991

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"History, theology, and philosophy will show that every enlightened civilization has had a sense of right and wrong and a need to try to distinguish them."

Michael Josephson, ethicist
from Bill Moyers' *A World of Ideas*

SO 023 609

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The Death Penalty in the United States is a project of

The Study Circles Resource Center of Topsfield Foundation, Inc.

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The goal of the Study Circles Resource Center (SCRC) is to advance deliberative democracy and improve the quality of public life in the United States. By promoting small-group, democratic, participatory discussions on social and political issues, SCRC hopes to contribute to a more enlightened and involved citizenry capable of making decisions based on informed judgment.

Please write the Study Circles Resource Center at PO Box 203, Pomfret, CT 06258, call (203) 928-2616, or FAX (203) 928-3713 for more information on study circles and the Study Circles Resource Center.

July 1991

In a democracy, it is crucial that the public have input into the decisions government makes. Citizens must listen to a variety of viewpoints, consider the consequences of all positions, and make hard choices. The Study Circles Resource Center's Public Talk Series is based on this belief. The programs of the series are designed to assist in the discussion of critical social and political issues; each offers a balanced, non-partisan presentation of a spectrum of views.

The Death Penalty in the United States provides the information your group will need in order to hold a discussion on a special kind of policy issue – one in which ethical concerns have a prominent place. Such issues are especially difficult to grapple with since people's deeply-held beliefs come into play, and yet there are few opportunities to reflect on these beliefs in an impartial setting. Discussion of the death penalty is especially important now as policymakers at national and state levels endeavor to respond to the violent crime in our society, in part by reviewing public policy on the death penalty. We therefore encourage you to invite your organization's members, friends, neighbors, and co-workers to join with you in a discussion of the difficult issue of capital punishment.

A summary of the material

Four possible positions about the use of the death penalty are at the heart of this program:

Position 1 – The death penalty should be abolished because it is cruel and unusual.
Position 2 – The death penalty should be abolished because it is unjustly applied.
Position 3 – The death penalty should be retained because justice requires it.
Position 4 – The death penalty should be retained and made easier to implement because it serves a useful purpose.

These positions are the starting point for a highly participatory discussion in which a leader assists participants in grappling with the issue of capital punishment. Although the arguments for and against these positions are primarily of an ethical nature, the acceptance of any one of the positions would result in a distinctive public policy.

Organizing a small-group discussion on this issue

The positions and the supporting material are designed for use in a single-session program of approximately two hours. The organizer will need to recruit between 5 and 20 participants, decide on a time and place for the meeting, select a discussion leader, photocopy the materials (participants will need copies of items marked with an asterisk in the table of contents), and distribute them to participants. If there is not enough time to mail information to participants

prior to meeting, the components that should be handed out during the meeting are "A Framework for Discussion," "A Summary of the Positions," "Suggestions for Participants," and the "Follow-up Form."

The organizer's most important task is choosing the discussion leader. This person need not be an expert on the subject being debated, but should have some familiarity with it. The leader should be able to encourage participants to freely express their thoughts while preserving some focus to the session as a whole. A commitment to balance and impartiality is essential. Included for the leader's use are "Suggestions for Leading *The Death Penalty in the United States*" and "Suggested Discussion Questions." The leader should also read carefully the general suggestions in "Leading a Study Circle." (Please see the back cover of this packet for information on additional resources on organizing and leading study circles available from SCRC.)

Organizing further discussions

The Study Circles Resource Center (SCRC) makes this material available in part to encourage discussion of this particular issue; our end goal, however, is to encourage citizen debate on the wide range of issues confronting our society, whether local or national. We hope that the use of this material will inspire your group to become a "study circle," meeting regularly to discuss issues of common concern.

Several options are available to groups wanting to carry on to discuss other issues. See the back cover of this packet for a list of other programs in the Public Talk Series. Also noted on that page is SCRC's clearinghouse list of discussion programs developed by a variety of organizations. If your group would like to take on an issue for which no ready-made discussion package is available, a few good newspaper or magazine articles can provide the basis for dialogue. Please call us at SCRC for advice on developing your own study circle material.

We invite you to partake of the richly rewarding discussion that can result when you meet with your peers, associates, friends, and neighbors in small, informal gatherings to discuss the concerns of our society. And we encourage you then to communicate the outcomes of your discussion to relevant policymakers, for only then can your informed judgment influence policy.

Paul J Aicher

Paul J. Aicher
Chairman

The Death Penalty in the United States
A Framework for Discussion

On a spring day in 1989, a 28-year-old jogger was attacked in Central Park by a gang of teens from Harlem. The young woman was chased, beaten, hit in the head with rocks and a lead pipe, brutally raped, and left for dead. In his editorial entitled "Crime and Responsibility," published in *Time* shortly after the attack, columnist Charles Krauthammer expressed enormous outrage at the number of people who viewed the gang members, along with the woman they assaulted, as the victims in this case. He quotes, for instance, forensic psychologist Shawn Johnston, who defended the view that "These children are damaged. They are in pain inside . . . acting out their pain on innocent victims. In the case of the Central Park beating, they picked a victim that was most likely to shock and outrage. That speaks to how deep their anger and despair is."

Krauthammer, who vehemently disagrees with Johnston's characterization, instead takes the following perspective:

> How could these boys have done something so savage? We have two schools. The "rage" school, which would like to treat and heal these boys, and the "monster" school, which would like to string them up.
>
> I'm for stringing first and treating later. After all, the monster theory, unlike the rage theory, has the benefit of evidence. What distinguishes these boys is not their anger – who is without it? – but their lack of any moral faculty. Acts of rage are usually followed by reflection and shame. In this case these characteristics appear to be entirely missing.
>
> These boys were not angry, they were "wilding." Wilding is not rage, it is anarchy. Anarchy is an excess of freedom. Anarchy is the absence of rules, of ethical limits, of any moral sense. These boys are psychic amputees. They have lost, perhaps never developed, that psychic appendage we call conscience. [*Time*, May 8, 1989, p. 107.]

The most brutal and shocking cases of violent crime, brought home to us in the daily newspaper or on the evening newscast, remind each of us of our own vulnerability. No matter how we view those who commit such acts, there is an increase in public fear and outrage at the nature and frequency of violent crime in America. These feelings, accompanied by doubts about the effectiveness of our criminal justice system, have led to renewed calls for penal reform.

People are understandably jaded with respect to whether justice is ever really done in our society. The perception that relatively few criminals are apprehended, and that even fewer are punished in accordance with what they deserve, fuels individual frustrations. Of those criminal cases resulting in a guilty verdict, approximately 90% are resolved through plea bargains (whereby criminals plead guilty in exchange for lighter sentences). Oftentimes, criminals are allowed to get off on legal technicalities. And, perhaps most disturbing of all, a convicted murderer's "life sentence" in most cases means serving less than ten years, given the possibility of parole. [Thomas R. Dye, *Understanding Public Policy*, 6th edition (Englewood Cliffs, NJ: Prentice Hall, 1987), pp. 80-108.]

As we can see from Krauthammer's remarks, however, the direction for reform of the criminal justice system will reflect and be influenced by what we as citizens perceive as the system's proper goals. Thus, a central focus for discussion of penal reform will necessarily involve debate on the aims and purposes of punishment. As members of this society, we must ask ourselves the following questions: *Is the purpose of punishment to prevent crime through the incapacitation of the criminal by imprisonment or execution? Is it to ensure swift, certain, and severe punishment in order to deter others from committing similar crimes? Does punishment serve a retributive function, whereby society has the right to demand the criminal pay a debt for harm inflicted upon the innocent and for the disruption of law and order? Should society seek to punish in order to lessen the impulse by victims and their families to seek revenge? Or, should the aim of the penal system be to provide treatment for criminals in an effort to rehabilitate them?* A policy that attempts to achieve all of these goals runs the risk, many fear our society has taken and lost, of none of the goals being met effectively. Advocates for reform of our criminal justice system suggest either a new ordering of priorities or the abandonment of some of the stated objectives altogether.

At no point does the debate concerning the correct criminal justice policies become more intensified than when discussing the death penalty. Clearly, the death penalty is an issue that divides us. On opposing sides of the issue are "abolitionists," who believe we ought to do away with the death penalty, and "retentionists," who believe we should retain the death penalty in states where it already exists and reinstate the death penalty where it has been abolished. Underlying these two basic positions, however, is a manifold of complexities which make the seemingly straightforward question of whether the death penalty should be abolished or retained extremely difficult to resolve.

Both sides of this issue are supported by plausible arguments based on principles of justice, as well as on practical considerations. For example, those who support the death penalty often maintain that justice demands punishment that fits the crime, whereas abolitionists contend that justice mandates the elimination of the death penalty because of the unfair and discriminatory manner in which it is applied. Similarly, both retentionists and abolitionists appeal to the real-world effects of the use of the death penalty in defending their positions. Thus, some who argue against the use of the death penalty claim that when it is carried out, the death penalty actually has a brutalizing effect on society by condoning violence and exciting people to further violence. On this view, the use of the death penalty actually provokes violent crime. On the other side, many who argue for the use of capital punishment insist that it has a deterrent effect that prevents murder by instilling the fear of such a fate in would-be murderers.

Studies attempting to demonstrate the deterrent or brutalizing effects of capital punishment are regarded by many social scientists as inconclusive, though. One of the difficulties encountered is that these studies are endeavoring to measure and observe non-behavior – that is, the number of murders that would have taken place had it not been for the death penalty. Another problem is that a wide variety of social factors – such as age, unemployment, race and ethnicity, the publicity surrounding the execution, and the level of gun ownership in an area – may affect statistical outcomes, yet have not been considered in every study. Given that these studies are inconclusive, perhaps a better focus for discussion is the question of whether one's thinking about the death penalty would change if we *knew* that the death penalty deters, or, conversely, provokes violent crime.

There is a range of possible positions one can take on society's use of the death penalty. The material in this packet presents a spectrum of four positions:

Position 1 – The death penalty should be abolished because it is cruel and unusual.
Position 2 – The death penalty should be abolished because it is unjustly applied.
Position 3 – The death penalty should be retained because justice requires it.
Position 4 – The death penalty should be retained and made easier to implement because it serves a useful purpose.

As you read each of the positions, think about which supporting arguments are most persuasive to you, and which are least persuasive. Which position is most favorable to principles of justice? Which position would best serve the interests of society? Whether or not we should keep the death penalty is an ethical issue, but it is also an issue of policy. Each of these four positions, if accepted and acted upon by policymakers, would result in different policies. This makes it even more incumbent on citizens to think carefully together about this issue. The four positions presented are intended to provide a starting point for thoughtful analysis and debate with others about the death penalty.

The Legal Background

From the 1930s through the 1960s, the number of executions in the United States continued in a steady decline until 1967, when the use of the death penalty was suspended altogether pending a decision by the Supreme Court concerning its constitutionality. At issue was whether the use of the death penalty was a violation of the Eighth Amendment's prohibition against the federal government's use of "cruel and unusual punishment" and the Fourteenth Amendment's provision for due process under the law. The challenge to the constitutionality of the death penalty in *Furman v. Georgia* was put forward at a time when 39 states allowed for its use.

When the Supreme Court finally rendered its decision in 1972, the justices ruled 5-4 that the death penalty, *as administered at the time,* was in fact unconstitutional. The court found that the death sentence was handed down at the discretion of the judge and jury, with very few, if any, guidelines issued as to when it would be consistent with punishment given for similar crimes. The use of such "standardless discretion" left open the possibility for widespread discrimination and inconsistency in the method of application of the death penalty, whereby those who were equally deserving of harsh punishment might nevertheless escape it. Justice Potter Stewart compared this capricious application of the death penalty to "being struck by lightning." For this reason, the majority of the justices ruled that the use of the death penalty must be abolished until states rewrote laws and developed guidelines for juries that would promote and ensure the fair and uniform application of the death sentence. However, while the justices found fault with the way the death penalty was applied, they did not find fault with the penalty itself. Only two of the justices, Marshall and Brennan, argued that the death penalty should be abolished because it is cruel and unusual by its very nature.

In response to the Supreme Court's ruling, several states quickly adopted guidelines for issuing a sentence of death. Some states did this by making the death penalty mandatory for certain crimes, while others adopted a two-part trial system. The first trial served to determine the guilt or innocence of the defendant. The second trial would determine sentencing, and included a process for instructing the jury with respect to established guidelines for weighing aggravating factors (ones that might speak in favor of the death penalty) against mitigating factors (ones that might lessen responsibility, and therefore speak against the death penalty in that particular case).

In 1976, the Supreme Court's *Gregg v. Georgia* decision upheld the death penalty in states where the two-part trial proceedings were employed, but struck down the death penalty where it was mandatory for certain crimes. While the court did not want juries to have complete discretion in sentencing death, it also did not want to go too far in the opposite direction and not allow juries any discretion. With its ruling, the justices affirmed that the death penalty does not, in and of itself, violate the Constitution.

As it now stands, state legislatures have the power to decide which penalties best serve society and the aims of punishment. There are 36 states with statutes making provisions for the death penalty. The minimum age of eligibility ranges from 10-17 in states that allow for the execution of minors. In addition, the federal crime bill currently under consideration in the Congress would include a number of new provisions for the use of the death penalty by federal as well as military courts. The retention or abolition of the death penalty is a matter for the will of the people. In this case, it is a matter of life and death.

Summary of the Positions

Position 1 – The death penalty should be abolished because it is cruel and unusual.

The death penalty should be abolished because it:

- Is a form of cruel and unusual punishment.
- Violates the sanctity of life and is degrading to human dignity.
- Is excessive given the option of life in prison without parole.
- Takes away the criminal's fundamental right to life.
- Reinforces feelings of vengeance and hatred within society.
- Provokes violence by having a brutalizing effect on society.
- Is not consistent with contemporary standards of morality.
- Diminishes us all by reducing us to the level of the murderer.
- Adds to the number of people subjected to a brutal death and the number of innocent families who must endure the killing of a loved one.

Position 2 – The death penalty should be abolished because it is unjustly applied.

The death penalty should be abolished until there is widespread reform of the criminal justice system because:

- It is implemented with racial and gender biases.
- The poor are less likely to have good legal counsel and are therefore more likely than the rich to be executed for similar crimes.
- It is often applied on the basis of the perceived worth of the defendant and the victim as opposed to on the basis of the severity of the crime itself.
- It is unjustly applied to minors, those who were juveniles at the time their crimes were committed, the mentally retarded, and the insane.
- It is used disproportionately in some areas of the U.S., meaning that the equally deserving are not punished equally.
- There is always the possibility of executing the innocent.

Position 3 – The death penalty should be retained because justice requires it.

The death penalty should be retained in states where it already exists and reinstated where it has been abolished because:

- Some crimes are so hideous that those who perform them deserve the death penalty.
- Justice requires punishment in direct proportion to the severity of the criminal offense.

- In protecting its citizens from harm, the state is justified in using capital punishment as a means of social defense.
- It expresses society's moral outrage at suffering inflicted upon the innocent.

Position 4 – The death penalty should be retained and made easier to implement because it serves a useful purpose.

The death penalty should be retained and made easier to implement because:

- It deters crime.
- In order for it to be a more effective deterrent its use must be swift and certain.
- By making it difficult to execute criminals in an attempt to protect their rights, we have ignored the rights of victims.
- Allowing for years of costly appeals delays justice and undermines confidence in the system.
- The long waiting period on death row prolongs the anguish for everyone involved and renders an otherwise just punishment cruel and unusual.
- It is better to risk injustice by executing the guilty than by failing to prevent the deaths of the innocent.

An Examination of the Positions

Position 1 – The death penalty should be abolished because it is cruel and unusual.

Every person has the right to be treated in a manner that is consistent with the individual's intrinsic worth as a human being. The death penalty violates this right by inflicting a form of punishment that is cruel and unusual. Punishment is usually considered "cruel and unusual" if it is excessive, either because it is unnecessary or because it inflicts senseless and uncalled-for pain. Therefore, unless there is a good reason to punish a crime more severely, a less severe punishment is to be preferred.

Because the purposes of punishment can be achieved without the taking of a life, the death penalty should be regarded as the pointless infliction of excessive punishment. In our criminal justice system, punishment is intended to: a) inflict retribution (just deserts) on the wrongdoer, b) deter criminal conduct, c) protect the public from the criminal, and d) promote the correction and rehabilitation of the offender. The death penalty does not allow for rehabilitation since death precludes the possibility of reform. Further, a death sentence does not meet the other three objectives significantly better than a sentence of life in prison without the possibility of parole. This makes capital punishment no more than an act of revenge that is degrading to human dignity and without a place in a civilized society.

As participants in a society that allows executions, we diminish the value of all life, not just the life of the criminal. Capital punishment further desensitizes the members of society to the use of violence and implies that killing another human being is an appropriate solution to a societal problem. Moreover, instead of condemning and deterring murder and other acts of violence, the death penalty is a form of state-sanctioned violence that has a brutalizing effect on society. For this reason, the death penalty is bound to provoke violence and thereby produce the very effects it is designed to eliminate.

Underlying Principles and Assumptions ***(Rejoinders in italics)***

1. Every human life has dignity and worth, including the life of a convicted criminal.

   The death penalty does not lessen the value for human life, it upholds the value. This can be seen in two ways. First, to allow those who murder to continue living would truly be a devaluing of human life, for it would diminish the worth of the victim's life. Second, the use of the death penalty affirms the dignity and worth of the criminal by recognizing the person as a human being who is responsible for the choices that follow from his or her acts of will.

2. The use of the death penalty violates the sanctity of life.

   Our respect and reverence for life should extend to the potential victims. Those who are opposed to capital

About one in every eleven under sentence of death for whom criminal history data was available had a prior homicide conviction. [U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, *Capital Punishment 1989*, October 1990, p. 1.]

punishment for repeat offenders seem indifferent to the lives of those who will be the next victims of such killers.

3. The right to life is the most basic of human rights. As a moral right possessed by all persons, it cannot be relinquished and is therefore violated by executions.

   Not every act of killing is a violation of the right to life. Whenever one violates the rights of another, the individual forfeits his or her own rights. The taking away of the offender's rights under such circumstances would be a justified infringement, not a violation.

4. Just as torture and mutilation of criminals has no place in contemporary society, regardless of whether these forms of punishment would prevent or deter further killings, executions, given evolving standards of morality, should be viewed as barbaric and therefore impermissible in civilized society.

   Public opinion has consistently supported the use of the death penalty, and support seems to be on the increase. In a 1987 ruling on the death penalty, Supreme Court Justice Powell wrote, "It is the legislatures, the elected representatives of the people, that are constituted to respond to the will and consequently the moral values of the people." The fact that 36 states currently have laws enacted by their legislatures allowing for the use of the death penalty is a measure of public support for the practice of capital punishment. Therefore, the death penalty does not run counter to contemporary standards of morality.

5. Capital punishment, along with murder, often results in an untimely, undignified death that causes terror and bodily disfigurement of the victim. This constitutes cruel and inhuman punishment. Furthermore, the methodical and ritualistic process of planning and readying a person for execution, for instance by shaving a person's head and legs and spraying the person with saline in order to ensure that the electrodes will conduct electricity efficiently in an electrocution, is a sadistic process that we should not permit society to practice.

   Electrocution is the most frequently used method, making up 60% of the executions since 1977. Lethal injections have been used in 33% of the cases. The other methods include firing squad and lethal gas. [U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, *Capital Punishment 1989*, October 1990, p. 12.]

   There is nothing inherently cruel about the punishment of death. Death is a fact of life, the natural end to the process of living. The cruelty and indignity involved in particular forms of execution doesn't support the prohibition of all executions, no matter how painless or dignified (e.g., through lethal injection).

   Furthermore, for some criminals, facing the possibility of life in prison without parole is more cruel and inhuman than a relatively quick and painless death. Should we abolish prisons, too?

6. The death penalty is excessive, in the sense of being unnecessary, given that lesser penalties are capable of serving the same legislative purposes of retribution and social defense.

   Death is the only way to prevent some people from killing again. Those who murder after being sentenced to prison, while in prison or upon release, warrant the death penalty. Prison has not served to deter, prevent, or reform these people. Further, some individuals

serve to foster and agitate terrorist activity and continued strife. We may need to execute these prisoners in order to protect society from organized violence.

7. State-sanctioned killing through executions suggests that violence is an appropriate way to resolve society's problems. This form of institutionalized killing makes murder seem morally acceptable and thereby provokes further violence. How can we expect people to understand that killing is wrong by killing those who kill? The state is only reinforcing the violence and hatred we seek to eliminate from society.

There is a difference between murder and the use of capital punishment. Not every intentional act of killing a person is an act of murder. Sometimes we have to resort to the use of force. Consider, for instance, killing in self-defense or in war: all but the extreme pacifist would find these morally permissible. The killing involved in capital punishment falls into the same category of justified acts of taking the life of another. Murder, by contrast, is the unjust taking of human life. The approval of one type of killing in no way implies approval of the other.

Position 2 – The death penalty should be abolished because it is unjustly applied.

> While women commit 40% of the murders in the U.S., they make up only 1% of the prisoners on death row. [U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, *Capital Punishment 1989*, October 1990, p. 2.]

While the death penalty is not cruel and unusual in and of itself, it should be abolished because of its unjust application. The more severe a penalty is, the more important it becomes to inflict it fairly and equally on all – and only – those who deserve it. However, capital punishment is often implemented with racial, gender, and class biases and therefore does not provide for equal treatment under the law. In theory, it may be the case that a sentence of death is justified, but the potential for abuse in the practice of carrying out the death penalty renders its use unacceptable.

For instance, there is a great deal of evidence suggesting that the race both of the defendant and the victim play a significant role in returning a death sentence. Different punishments are imposed based on the perceived worth of the individuals involved and not on the basis of what is deserved. This leads to obvious discrimination in the way the death penalty is applied. Based on the disproportion in the severity of sentences returned for similar crimes, juries seem to have more sympathy for white victims and their families, as well as for killers who are white.

In addition, consider the fact that more than 90% of the 2,400 people on death row were unable to afford an attorney. Given that many court-appointed attorneys are grossly underpaid in comparison to their colleagues in private practice, oftentimes there is very little incentive for providing the most zealous defense for their clients. To make matters worse, in 1989 the Supreme Court denied that indigents on death row have the constitutional right to counsel at the state's expense for postconviction proceedings related to the convictions and sentences received. (This is now a matter for state determination.) Thus, the guilty poor are much more likely to be executed than the guilty rich, who can more easily escape conviction or receive lesser penalties.

Furthermore, the death penalty, unlike other penalties, is irrevocable. We cannot ignore the fact that the use of capital punishment may lead to the execution of the innocent. Compensation can be provided for those who are wrongly imprisoned, but cannot be offered to those who are mistakenly executed. Thus, Anglo-American law has long held that "it is better that ten guilty persons escape than one innocent suffer".

The principles of justice and fairness often appealed to by those who want to retain the death penalty entail not only that it is wrong to punish the innocent but also that those who are equally deserving of punishment should be punished equally. The above considerations should lead one to the conclusion that even if the state has the right to use the death penalty, it should not be applied without widespread reform of the present system.

Underlying Principles and Assumptions ***(Rejoinders in italics)***

1. There are racial inequities in the sentencing and imposition of the death penalty and in the disproportionate use of the death penalty against those whose victims are white as opposed to those whose victims are black. Death sentences and subsequent executions more often serve to eradicate victims of prejudice and discrimination rather than society's most heinous and brutal killers.

Injustice in the distribution of the death penalty is not an argument against the penalty, it is an argument against the process. It may be that juries are discriminatory in sentencing minorities to death more frequently, while equally deserving non-minorities escape the most severe punishment. Our response to the lack of fairness and uniformity in the application of the death penalty should be to modify the system that allows for the injustice, as opposed to abolishing the penalty.

A recent study prepared by the Death Penalty Information Center of Washington examined data on murder cases in Chattahoochee, Georgia from 1973 to 1990. According to the study, 85% of capital cases brought by local prosecutors involved white victims, even though only 35% of murder victims were white. [David Margolick, "In the Land of the Death Penalty, Accusations of Racial Bias," *New York Times*, 10 July 1991, p. A1.]

2. Capital punishment oppresses those who are already the most disadvantaged in our society. Those who can afford to hire their own attorneys are more likely to escape conviction or receive lesser penalties than those who cannot. Therefore the guilty poor are more likely to be executed than the guilty rich. People should be punished more severely for having committed the worst crimes, not for having the worst lawyers.

   Again, injustices in the application of the death penalty do not reside in the penalties inflicted, but in their distribution. The fact that the sentencing and appeals process serves to further disadvantage the poor suggests a need for reform in the representation process. It doesn't follow that until this process is complete that we should never apply the death penalty.

3. The use of the death penalty may lead to the execution of the innocent. Our judgment of a convicted person's guilt may change, but death is irrevocable. It is better to run the risk of not punishing the guilty as severely as we should than to run the risk of executing the innocent.

Twenty-three innocent people are known to have been executed in the U.S. in this century. [Amnesty International briefing, *When the State Kills . . . The Death Penalty: A Human Rights Issue* (April 1989), p. 7.]

   There is the possibility of injustice whenever any punishment is inflicted. Given that someone's life is at stake, juries are probably much more careful than they would be if a lesser penalty were involved. Thus, the death penalty is probably less often unjustly inflicted than other penalties. The potential for grave and irrevocable injustice through the infliction of the death penalty on the innocent doesn't mean we should never use the death penalty, it simply means that we should take great care not to inflict it upon the innocent.

4. The severity of the death penalty makes juries less likely to use it. Some judges and juries would rather acquit a person they believe to be guilty than to impose a death sentence. Therefore, the retention of the death penalty decreases the chances of justice being met.

   If juries are softened when they actually have to consider returning a death sentence, we should be comforted by the fact that our system does not impose a cold and harsh justice, but is instead humane. The difficulty juries have in sentencing someone to death should indicate that those who receive this sentence are really deserving of death.

   The limited choice of either acquitting a person or imposing a death sentence would occur only if death penalties were mandatory for certain crimes. At best this serves as an

argument against the mandatory imposition of the death penalty, which would eliminate the discretion of the jury with respect to sentencing. Even with mandatory death sentences, the fact that some would rather let a guilty person go free than to follow the law points to a problem with the judge and the jury, not with the penalty. This is one of the reasons why jury selection is so important.

5. Those who want to retain the death penalty often appeal to principles of retribution, according to which crime must be punished and punishment must be in direct proportion to the severity of the crime. This theory of punishment presupposes a rational offender who receives justly deserved punishment for upsetting the balance of society. The laws of society serve to protect individuals from harm in return for an agreement to follow and live by the law. In breaking the law, the criminal disrupts the balance of society by receiving benefits without fulfilling the corresponding duties.

   But, such an ideal notion of justice ignores the economic and social injustices that often lead to crime. Very few, if any, violent crimes are committed by people who have freely, rationally, and deliberately violated the law in the absence of excusing or justifying considerations. Instead, social, economic, environmental, or hereditary conditions exist that would mitigate or diminish responsibility, if not eliminate it altogether.

   Everyone has something in his or her past that might be used in an attempt to excuse or justify criminal behavior. People grew up either too poor, undereducated, abused, misunderstood, not loved enough, or else they had life too easy, never learned the proper values, and lashed out at the system in hopes of attracting attention. If we allow such considerations to diminish responsibility, no one would ever be punished. Instead, we would abandon prisons in favor of hospitals and punishment would be replaced by treatment. This view confuses sickening behavior with being sick. Admittedly, some people genuinely do not have the psychological capacity to conform to the law. For these individuals we have the "insanity plea." In most cases, however, we have taken the rehabilitative ideal too far. It is time we move in the opposite direction of assigning "strict liability" (that is, responsibility for crime without consideration of the mental culpability or blameworthiness of the offender).

6. Among those on death row are prisoners who are mentally ill, retarded, and those who either are, or were, juveniles at the time of their crimes. Society has an obligation to protect these individuals from injustice. Clearly, it is unjust to hold children, the mentally handicapped, and those with mental illness fully responsible for their actions.

   More than 30 prisoners on death row are there for crimes they committed when they were juveniles. [Amnesty International briefing, *USA: The Death Penalty* (October 1986), p. 9.]

   The children who are on death row are not there for committing minor pranks. They have carried out such acts as robbery, rape, and sodomy, in addition to brutal murders. It is because of society's perceived duties to children that no jury would take lightly the sentencing to death of a young person. The execution of juveniles is authorized due to the fact that, as the Supreme Court noted, "There is no evidence that offenders of this age are less able to be deterred or less morally blameworthy than older offenders."

Similar considerations are true of the mentally impaired. Those on death row were found competent to stand trial and were considered able to understand that their actions would likely lead to the death of another. While the mental capacity of the criminal should be considered and weighed among others factors at the time of sentencing, mental deficiencies should not mean the absolute prohibition against the use of the death penalty. There are those who become insane or first exhibit signs of insanity while already on death row. The execution of these people is considered by most death-penalty states to be cruel and unusual. For this reason, such prisoners are transferred to mental hospitals and treated until they become fit to be executed.

Position 3 – The death penalty should be retained because justice requires it.

The law functions, among other things, to protect the members of society from harm. Those who benefit from society's laws have an obligation to obey them. Principles of justice and fairness require people to live within the law and not make themselves exceptions to the law. When one freely and intentionally violates the laws designed for our protection, one becomes justifiably subject to punishment by the state that represents that society. The system of punishment provides incentive for people to comply with the fair and just rules of society.

Justice requires punishment in accordance with what is deserved and in direct proportion to the severity of the criminal offense. Thus, it would be unjust not to punish someone who has violated the law and deserves to be punished or to punish the person more or less severely than he or she deserves. Some crimes are so hideous that those who commit them deserve the death penalty.

Further, in protecting its citizens from harm, the state is justified in using capital punishment as a means of social defense. Acting on behalf of those who are potential victims of society's most hardened criminals, the state is entitled to execute the guilty as a means of protecting the innocent.

The death penalty expresses society's moral outrage at suffering inflicted upon the innocent. Public opinion in our country has consistently supported the death penalty for murderers. Our sense of justice demands that people who kill the innocent pay with their lives.

Therefore, the death penalty should be retained in states where it already exists and it should be reinstated in states where its use has been discontinued. The death penalty should also be mandatory for those who commit the most heinous crimes.

Underlying Principles and Assumptions ***(Rejoinders in italics)***

1. Some acts are so despicable that the only appropriate and adequate response is the death penalty.

   No matter how atrocious a crime has been committed, executing the offender does not change what has been done nor does it compensate for the loss suffered by the victim and the victim's family. Capital punishment only adds to the number of victims subjected to a brutal death and to the number of innocent family members who must endure the death of a loved one at the hands of another.

2. Capital punishment is a means of social defense. Society not only has the right, but the duty, to protect its citizens from killers who either cannot or will not live within the law. Just as an individual has the right to kill an unjust attacker in self-defense or in the defense of an innocent third-party, the state has the right to execute certain criminals for the protection of the members of society. Capital punishment is used to prevent convicted criminals from repeating their crimes, either upon release from prison or while already serving time. This is a form of indirect self-defense in which the state acts on behalf of the individual. The state is justified in imposing some penalties over and above what is required for immediate defense if it is the only way to prevent someone from committing acts of aggression in the future. When the choice is between having the wrongdoer suffer

more harm than is necessary in the present or allowing an innocent person in the future to suffer at the hands of a wrongdoer, justice allows for the former.

The self-defense analogy fails to support the use of capital punishment. Self-defense is justified only if the force used is necessary. In murder cases the attack has already taken place and the harm has occurred. If we have every reason to believe that the person continues to pose a threat, we would be justified in killing in self-defense only if there were no other means of preventing the harm. But there is the option of life in prison without parole. Those already in prison can be isolated and treated with medication that reduces their level of violent activity. We can protect members of society without resorting to the brutal use of force in capital punishment.

3. The principle of retaliation (*lex talionis*), often expressed as "an eye for an eye," requires murderers to be put to death. Justice requires imposing a penalty equal in severity to the offense. Therefore, murderers deserve to die.

"Retribution" comes from the Latin *retribuere*, meaning "to repay." Retributive theories of punishment assume that the purpose of punishment is to make the criminal pay a debt to society. On this view, the criminal receiving punishment is getting what he or she deserves.

The retributivist theory of punishment presupposed by the law of retaliation requires that people pay a debt to society for criminal acts, but allows that a person may make restitution by suffering a loss that is nearly equal to, but not equivalent to, the harm suffered by the victim. Thus our justice system does not call for the physical abuse of those who commit assault, or for rape of the rapist. Morality often prohibits us from inflicting the same harm that is incurred by victims of violent crime. Thus, while we may be tempted to say in certain cases that the criminal should be punished to the fullest extent of the law and that "death is too good for the wretch," reason and morality dictate that we use restraint. Some punishments are simply too brutal to be tolerated even when they are in direct proportion to the suffering experienced by the victim. Punishment is not and should not always be retributive in this sense. To demand death for those who kill, then, is inconsistent with what is required in other areas by retributive justice.

Punishment should be given in accordance with the severity of the offense, so that a thief should be punished more severely than a person who violates traffic laws. Likewise, a murderer should be punished more severely than the thief. But, in following the principle that people ought to be punished in direct proportion to the severity of the crime, nothing is entailed that suggests we must use the death penalty for certain offenses.

4. Capital punishment serves a retributive function, calling for people to pay for their crimes. The desire for revenge is deeply ingrained within us. If the justice system fails to punish in accordance with what members of society perceive as deserved, people will take the law into their own hands and the justice system will collapse. Capital punishment is a just expression of society's moral outrage at particularly offensive conduct.

Popular sentiment may support excessive punishment, but that doesn't make it morally permissible. The families of victims often would like to see the murderers of their loved ones suffer more. While we may sympathize with them and fully understand the inclination towards vengeance, there is an enormous expanse between what one might desire to do and

what one ought morally to do. People have the right to be punished in proportion to what they deserve. Punishment inflicted on the individual to satisfy the hatred felt by the victim's survivors is unjust because it violates this right. Blameworthiness is not determined by the desire for vengeance experienced by the survivors of the victim.

Position 4 – The death penalty should be retained and made easier to implement because it serves a useful purpose.

> Twenty-four hundred prisoners are currently on death row in the U.S. One hundred forty-five people have been executed since 1977. The average waiting period for those executed has been six years and seven months. [U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, *Capital Punishment 1989*, October 1990, p.9.]

The death penalty should be retained because of the benefits it produces. Rehabilitation and protection of society from criminals are of little importance in our actual justice system. We confine many people who do not need rehabilitation and against whom we need no protection. The real function of punishment is to deter others from breaking the law. The coercive imposition of external authority must be reinforced by consistent, swift, and severe punishment if people are to follow the law. The reason the death penalty is not a more effective deterrent is that it is not a swift and certain punishment. Instead, it is slow and uncertain. Currently, only 3% of murder convictions are accompanied by a sentence of death, and only a small number of these actually result in executions. Where threatened punishment is so light, or the chances of severe punishment being inflicted are remote, the advantage of violating the law tends to exceed the disadvantage.

Part of the problem results from the fact that capital punishment inevitably involves years of costly appeals. This not only delays justice, but prolongs the anguish for everyone involved. In fact, it renders an otherwise just punishment cruel and unusual. Furthermore, by allowing an unlimited number of appeals we undermine confidence in the criminal justice system. The number of appeals should therefore be limited.

In our effort to protect the rights of criminals, we have ignored the rights of the victims. The courts should give substantial weight to victim impact statements that explain the extent of the suffering experienced by survivors of murder victims. Since the testimony of survivors is likely to bear on the level of punishment inflicted on the offender, other potential killers may be deterred. For instance, would-be criminals might be less willing to take their chances in a survival lottery where the odds of coming out alive are greatly reduced.

It is true that capital punishment has not been proven to be an effective deterrent against murder and other serious crimes, but neither has it been proven to be ineffective. In the absence of any conclusive evidence one way or the other, it is better to risk injustice by executing the guilty than by failing to prevent the deaths of the innocent.

Underlying Principles and Assumptions *(Rejoinders in italics)*

1. The death penalty is necessary as a deterrent to crime. The reason it is not a more effective deterrent in society today is because it is not a sure and swift punishment.

   Studies attempting to demonstrate that the death penalty is a deterrent are inconclusive. But, even if the death penalty were proven to be an effective deterrent, its ability to deter would have to be significantly greater than the deterrent effects of imprisonment in order to be justified. Furthermore, the net savings in lives through executions must outweigh the cost of lives. The lives saved through deterrence must be greater than the number of lives lost through executions. It might also be argued that even if society could benefit from the

execution of an individual, it would be wrong to kill one person even to prevent the deaths of several others. Using people as a means to society's ends violates human dignity.

2. It is morally preferable to risk needlessly eradicating the lives of convicted murderers than to risk the lives of innocent people who might otherwise become future murder victims.

Capital punishment has a brutalizing effect. Some studies suggest that the murder rate goes up after executions. State-sanctioned violence may produce the very effects you wish to prevent.

Florida and Georgia, the states which have executed the most prisoners since 1979, both had an increase in murders immediately following the resumption of executions. [Amnesty International briefing, *USA: The Death Penalty* (October 1986), p. 18.]

3. Prisons are overcrowded. To execute those who cannot conform to society's rules would improve the quality of life for those who are capable of becoming productive members of society.

Viewing human life in purely instrumental terms, even if the life involved is that of a convicted killer, is morally unacceptable. Decreasing the prison population can be achieved through means that are consistent with respecting human dignity. In addition to eradicating some of the societal injustices that lead to crime, we might use electronic surveillance, or require monetary compensation or community service from those found guilty of non-violent crimes.

4. It is costly to keep a convicted murderer in prison. The money that is spent on housing, feeding, and providing basic care for such criminals would be better spent investigating and attempting to eliminate the causes of crime. We should lessen the burden on taxpayers by executing those who will never again be productive members of society. Decisions concerning life and death are made every day on the basis of economics.

The expense involved in capital trials, when taken together with the costs of the appeals process, of the special accommodations required in order to keep prisoners on death row, and of the execution itself, often exceeds the cost of keeping a criminal in prison for the remainder of his or her life. Further, some prisoners hold down productive jobs while in prison that pay for the cost of keeping them in jail. A cost/benefit analysis would likely support the abolition of the death penalty. Even so, resorting to an economic determination of whether someone should live or die is an affront to human dignity.

5. Allowing an unlimited number of appeals in capital cases makes a mockery of the justice system. Not only does it undermine confidence that justice will, in fact, be done, it is an extremely costly process. New legal standards require prisoners to demonstrate that there is a good reason for allowing another appeal and that the appeal is justified on the basis of some impropriety on the part of the police or prosecutors. These are stringent standards, but do not go far enough. There should also be restrictions placed on the conditions under which convicted killers can petition for first-time appeals.

Eliminating or curtailing the appeals process may make the system more cost-efficient and provide some people with emotional satisfaction derived from the feeling that justice has been done in a timely fashion, but this must not be at the cost of an individual's right to due process under the law. All criminals have the right to be protected against sentencing procedures that are unjust in that they are arbitrary and capricious. To deny the criminal

due process is to force the individual to stand alone against the awesome power of the state.

6. Victims and their families should have more rights. Victim impact statements should be used by all courts as evidence for determining sentences in murder cases. This not only has psychological benefits but social ones as well, since it may further deter those who are unwilling to enter into a "death sentence lottery."

   To allow so-called "victim impact statements" to be read at the sentencing phase of hearings violates the right to equal protection under the law. There is already significant racial and class discrimination in applying the death penalty. Sentencing that is influenced by the perceived worth of the victim would further contribute to an already discriminatory process. The black gang member from the ghetto who has no one to speak for him when he is slain will not be worth as much as the white college student who is murdered. People have the right to be punished in accordance with the crime that has been committed, not in accordance with the circumstances of the victim's life. In 1987, the Supreme Court ruled that neither the life and status of the victim nor the anguish of the survivors could be introduced as a factor in cases where the death penalty may be applied. The reversal of this ruling on June 28, 1991 has added further injustice to an already unjust system.

7. The death penalty is useful in obtaining plea bargains. The threat of capital punishment serves the function of providing murder defendants with incentive to plead guilty in exchange for a life sentence rather than face a trial in which the prosecutor may ask for – and a jury may return – a death sentence. In an already overburdened judicial system, in which the most common means of resolving criminal cases is through plea bargaining, we cannot afford to eliminate the beneficial effects of the death penalty.

   Capital punishment is either morally permissible or morally impermissible. Those who argue that it is wrong to use the death penalty could further contend that it is wrong to threaten to do what it is wrong to do. Thus, in spite of the social benefits that might result, it is morally impermissible to threaten people with the possibility of death unless they confess to a crime. For those who are in support of the death penalty as a means of meting out justice, this proposal will be equally unsatisfactory since it will lead to a punishment that is less severe than is deserved. In either case it would appear that the courts would not be justified in this particular approach to overcoming a problem in the administration of justice, namely the enormous case load of the courts.

8. In order for the death penalty to be an effective deterrent, executions should be heavily publicized, and perhaps even televised. If the public is unaware of the fact that executions are taking place and is unaware of the severity involved, the death penalty can have only a minimal deterrent effect.

   Deterrence is capable of working only on those who think about the consequences of their actions, accept that

According to a 1987 study, a nationally publicized execution is associated with, on the average, 30 fewer homicides in the United States in the month of the execution. Supporting the idea that a would-be criminal would have to hear about executions in order to be deterred by its possibility, the study found that little-publicized executions have no impact on homicide. The author of the study notes, however, that other factors are more strongly associated with the homicide rate. [Steven Stack, "Publicized Executions and Homicide, 1950-1980," *American Sociological Review* 52 (August 1987): 532.]

there is a possibility of being caught, and believe that the negative consequences of acting in the circumstances outweigh positive ones. Many murderers fail to meet these conditions in that they either don't consider the consequences, don't believe they will be caught, or don't care whether or not they are caught because they regard the act worth doing anyway. Some criminals even endeavor to be captured and seek out states with capital punishment before committing murder.

Televising executions may indeed serve to deter some criminals who would then have a clear and indelible image of the sort of death they might have to face if caught. This kind of publicity might also appeal to those who seek satisfaction through vengeance. However, the return to public executions might have the opposite effect of further desensitizing people to violence. In spite of its effects, such a bloodthirsty display is morally repugnant and must not be allowed.

Background Reading

THE NEW YORK TIMES, SUNDAY, JUNE 30, 1991

Did a Spate of Louisiana Electrocutions Affect Juries?

Abstract Death Penalty Meets Real Execution

By JASON DePARLE

IN the summer of 1987, Louisiana executed eight men in 11 weeks. Suddenly, in a state so enthusiastic about capital punishment that a legal newspaper dubbed it "Death Mill, U.S.A.," juries stopped handing out death sentences.

Opponents of capital punishment say the phenomenon supports one of their foremost articles of faith: that Americans say they want executions more than they actually do.

"When the reality of executions are brought home to people, they become much less likely to pull the switch," said Nick Trenticosta, director of the Loyola Death Penalty Resource Center, which helps defend people accused of murders punishable by death.

Supporters of capital punishment offer conflicting interpretations of the pattern. Some say it was a random occurrence signifying nothing; others say that jurors do get intimidated by the prospect of actual executions.

And while some complain that this makes death sentences too hard to impose, others cite it as evidence of the system's humaneness. They say it shows that executions are reserved for only the worst crimes.

From 1982 to 1987, Louisiana condemned an average of 16 men per year, according to the Loyola resource center. But after that summer's flurry of executions, the rate of death sentences dropped to one a year. The drop does not seem to have been linked to a decrease in crime since the number of murder arrests increased during that time, rising from 225 in 1987 to 425 in 1988.

Nine men had already been condemned in the first eight months of 1987; then the rush of executions occurred and more than a year passed before another death sentence was handed down. Now death sentences in Louisiana are once again on the rise, with five having been handed down in the last nine months.

Isolated, ephemeral or inexplicable as the Louisiana phenomenon may be, it has bolstered the spirits of death penalty opponents who, after years of legislative and judicial defeat, cling to the hope that Americans would recoil at widespread executions. With 2,421 men and 36 women now on death row, they note, it would take almost seven years of daily executions to kill them all.

Since the Supreme Court allowed the reinstatement of capital punishment in 1976, there have been 148 executions in 16 states, including 19 in Louisiana's electric chair. But no other state offers a similar test of the psychological pressures that executions create. Texas and Florida have executed more people, but no state has executed so many in such a short period of time.

Opponents of capital punishment say the 1987 executions may have had subtle psychological effects not only on juries, but also on judges, prosecutors, defense attorneys and defendants. Judges may have shaded their pretrial rulings, for instance, or defendants may be more willing to plead guilty in exchange for life sentences.

Some supporters of capital punishment scoff at this arm-chair psychology. "Do I think the chilling effect of executions caused juries to vote no? I totally disagree with that," said Don Burkett, president of the Louisiana District Attorneys Association. "I think the majority of citizens wish the death penalty would be carried out much faster and more often."

But other prosecutors say the psychology is real.

"I have no doubt that, subconsciously, the fact that people are actually being executed weighs on juries," said Jim Williams, an advocate of capital punishment who tried about 50 capital murders, and won five death sentences, before he recently left the New Orleans District Attorney's Office.

Piercing the Denial

The execution of eight men in 11 weeks in Louisiana did not stem from any official decision, but resulted when their separate legal appeals were exhausted.

In Louisiana, a 12-member jury must vote unanimously in order to impose death. If one dissents, a sentence of life without parole is automatic, so a recent execution need trouble just one juror to block a death sentence.

Opponents of the death penalty say the executions pierced a subtle system of psychological denial that makes all the individuals involved, from jurors to wardens, escape any sense of personal responsibility.

"The whole death penalty machine is driven by this diffusion of responsibility — no one seems to actually pull the switch," said Leigh Dingerson, director of the National Coalition to Abolish the Death Penalty. She said that is why firing squads traditionally include one rifle secretly loaded with a blank cartridge, so no rifleman can be sure he actually shot the prisoner.

While the jury vote is binding in Louisiana, for instance, until recently the instructions read out loud by the judge spoke of what happened if the jury "recommends that the sentence of death should be imposed." At the urging of defense lawyers, the state legislature in 1988 changed the word "recommends" to "determines."

Some capital punishment supporters say it is laudable for jurors to react to actual executions.

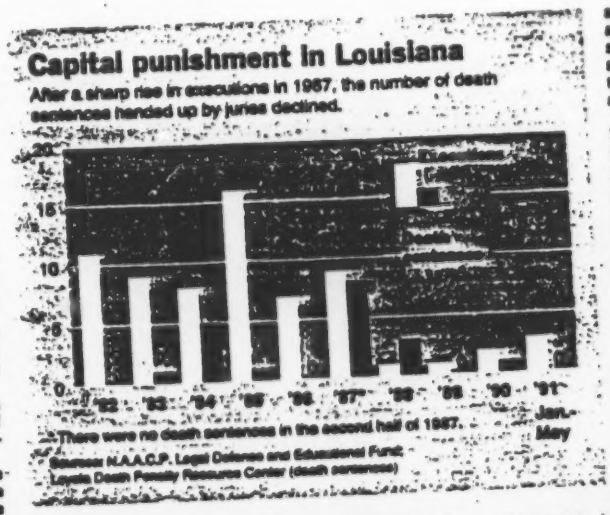
"As a supporter of the death penalty I see nothing wrong with people being reluctant to impose the death penalty except in the most heinous cases," said Richard Samp, chief counsel for the Washington Legal Foundation. But while Mr. Samp sees the imposition of capital punishment as discerning, many critics say it can be random. Studies have argued that race and location often play a large role in determining who is sentenced to die.

Ms. Dingerson and other opponents of capital punishment say the Louisiana experience helps show the American support for the death penalty, while broad, is shallow. Surveys frequently show up to 75 percent of Americans favoring capital punishment in general, but support declines when it comes to specific cases.

A Justice Department survey, for instance, used a computer to generate almost 2,000 simulated crime meant to be typical of those punishable by death. Those surveyed voted for the death penalty in just 36 percent of the cases. Death penalty critics say such figures show that Americans could be persuaded to abolish it. But Mr. Samp says they show that Americans do not want executions abolished but used judiciously. Mr. Williams, the former prosecutor, said that increasingly jurors will say during jury selection that they are not opposed to the death penalty later find that they have qualms about

Other people's attitudes can change in the face of actual execution. In 1984, Lloyd LeBlanc, a St. Martinville mechanic whose 16-year-old son, David, was kidnapped and murdered in 1977, witnessed the execution of the convicted murderer, Elmo Patrick Sonnier.

He said he thought of Mr. Sonnier's death recently while kneeling for prayer and watching the church candles flicker and fail. "That's exactly how life is snuffed out," he said, recalling the deaths of his son and Mr. Sonnier. "I was always for capital punishment, thinking I'd never have to do any dealings with it," he said. "But seeing it gives you second thoughts."



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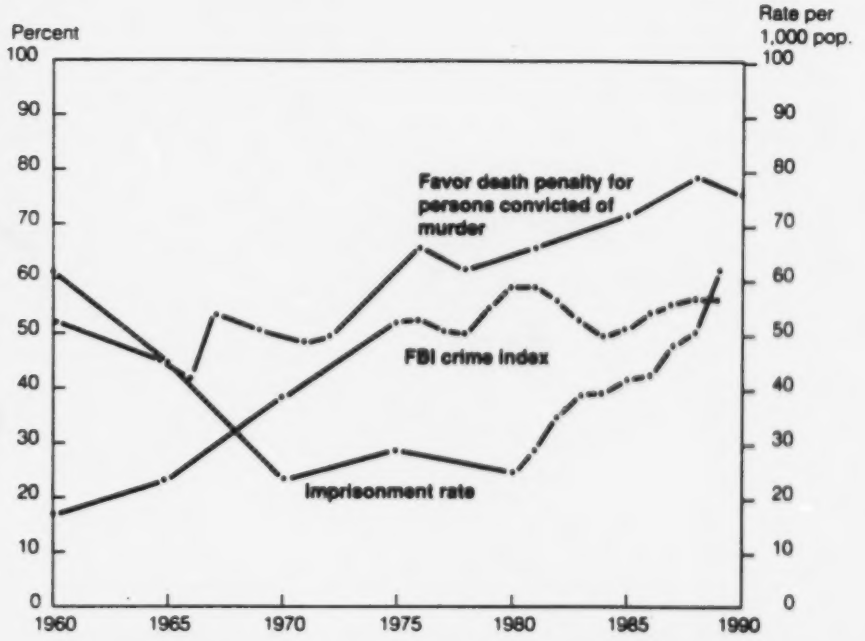
Copyright • July 1991 @ The Roper Center for Public Opinion Research. Reprinted by permission. This appears in The Public Perspective, a Roper Review of Public Opinion and Polling.

The Death Penalty

Backing for the death penalty for convicted murderers began rising in the late 1960s—after having fallen from the 1930s through the early 1960s—in the face of rising crime and falling imprisonment rates. Supporters see the death penalty as a deterrent and a just punishment.

Question: **Do you favor or oppose the death penalty for persons convicted of murder?**

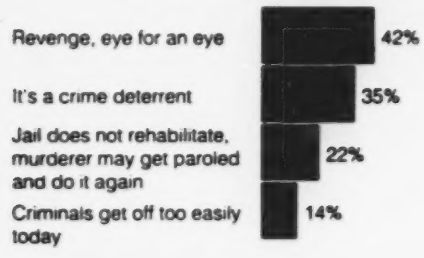


	— Rate per 1,000 pop. —		
	Favor the death penalty	Crime index	Imprisonment rate
1960	53%	18%	62%
1965	45	24	45
1966	42	—	—
1967	54	—	—
1969	51	—	—
1970	—	40	23
1971	49	—	—
1972	50	—	—
1975	—	53	29
1976	66	53	—
1977	—	51	—
1978	62	51	—
1979	—	56	—
1980	—	60	25
1981	66	59	29
1982	—	56	35
1983	—	52	39
1984	—	50	39
1985	72	52	42
1986	—	55	43
1987	—	58	48
1988	79	57	51
1989	—	57	62
1990	76	—	—

Note: The FBI crime index tracks the incidence of crimes (murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, theft, motor vehicle theft, and arson) as reported by local law enforcement agencies. The imprisonment rate reflects commitments to state prisons relative to serious offenses reported to police.
Source: Death penalty: Surveys by the Gallup Organization, 1960-1988, and CBS News/*New York Times*, August 16-19, 1990; Crime index: FBI *Uniform Crime Reports*; Imprisonment rate: Bureau of Justice Statistics, *Bulletin*, May 1991

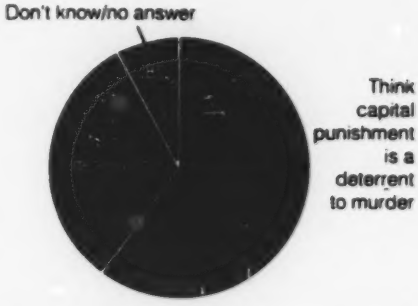
Question: **Why do you favor the death penalty?**

Reasons why you favor the death penalty*



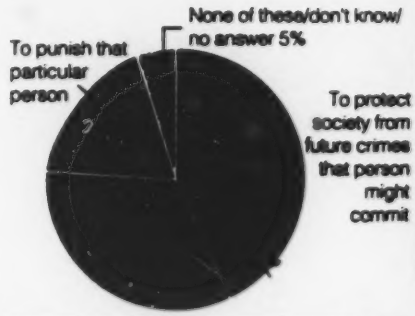
Note: Other=11%. *Jail sentences cost society too much money'=9%. Multiple responses accepted. * Asked of those who favor the death penalty (73%)
Source: Survey by ABC News/*Washington Post*, May 18-20, 1981.

Question: **Do you think that capital punishment–the death penalty–is or is not a deterrent to murder?**



Source: Survey by CBS News/*New York Times*, August 16-19, 1990.

Question: **Which of the following, if any, would you say is the main justification for the death penalty?**


None of these/don't know/ no answer 5%
To punish that particular person
To protect society from future crimes that person might commit

Source: Survey by Associated Press/Media General, November 7-14, 1986.

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Note: The Bureau of Justice Statistics will Publish *Capital Punishment 1990* in September of this year. (Call toll-free 800-732-3277 to order free single copies of BJS reports.)

Bureau of Justice Statistics Bulletin

Capital Punishment 1989

By Lawrence A. Greenfeld
BJS Statistician

Eight States executed 16 prisoners during 1989, bringing the total number of executions to 120 since 1976, the year that the U.S. Supreme Court reinstated the death penalty. Those executed during 1989 had spent an average of 7 years and 11 months awaiting execution.

During 1989, 251 prisoners under sentence of death were received by State prison systems from the courts. Ninety-six persons had their death sentence vacated or commuted during the year, and 6 died while under a death sentence. At yearend, 34 States reported a total of 2,250 prisoners under sentence of death, a 6.2% increase over the number held at the end of 1988. One prisoner was under a death sentence for other than murder (an inmate admitted during 1986 for the capital rape of a child in Mississippi); the remainder had all been convicted of murder. The median time since the death sentence was imposed for the 2,250 prisoners was 4 years and 3 months.

About 7 out of 10 offenders under sentence of death for whom criminal-history data were available had a prior felony conviction; about 1 in 11 had a prior homicide conviction. About 2 in 5 condemned prisoners had a criminal justice status at the time of the capital offense. Half of these were on parole; the rest were in prison, on escape from prison, on probation, or they had charges pending against them.

The majority, 1,310 (58.2%), of those under sentence of death were white; 903 (40.1%) were black; 23 (1%) were American Indian; and 14 (0.6%) were Asian.

Status of death penalty as of 12/31/89 and 1989 executions

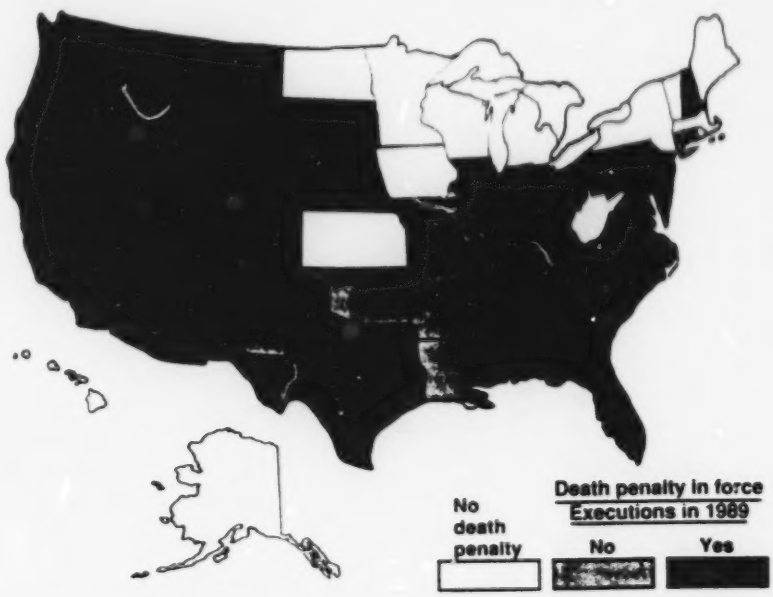

Figure 1

October 1990

This Bulletin marks the 60th annual capital punishment report issued by the Federal Government. Begun in 1930, this statistical series has provided detailed information on the characteristics of those receiving a death sentence as well as those persons executed. Machine-readable data covering all persons under a sentence of death at any time between 1973 and 1989 are available to the public through the BJS-sponsored National Archive of Criminal Justice Data.

I would like to express appreciation to the many persons in State and Federal corrections agencies and offices of State attorneys general who make this annual report possible.

Steven D. Dillingham, Ph.D.
Director

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Twenty-five (1.1%) of those under a death sentence were female. The median age of all inmates under a death sentence was nearly 34 years.

About 58% of those under sentence of death were held by States in the South. Western States held an additional 21%; Midwestern States, 15%; and the Northeastern States of Connecticut, New Jersey, and Pennsylvania, just under 6%. Texas had the largest number of condemned inmates (304), followed by Florida (289), California (254), Illinois (115), and Pennsylvania (112).

During 1989, 27 State prison systems received a total of 251 prisoners under sentence of death from courts. Florida (37 admissions), California (30 admissions), and Texas (29 admissions) accounted for more than 38% of the inmates entering prison under a death sentence during the year.

The 16 executions in 1989 were carried out by 8 States: 4 each in Alabama and Texas, 2 each in Florida and Nevada, and 1 each in Georgia, Mississippi, Missouri, and Virginia. Eight of those executed were white males, and eight were black males.

From the beginning of 1977 to the end of 1989, a total of 120 executions were carried out by 13 States. Of these, 71 (59.2%) were white, and 49 (40.8%) were black. Over the same period, 3,326 admissions under sentence of death occurred, of which 1,936 (58.2%) were white, 1,339 (40.3%) were black, and 51 (1.5%) were of other races. During the same years, 1,376 removals from a death sentence occurred as a result of dispositions other than execution (resentencing, retrial, commutation, or death while awaiting execution). Of those removed from a death sentence, 780 (56.7%) were white, 582 (42.3%) were black, and 14 (1%) were of other races.

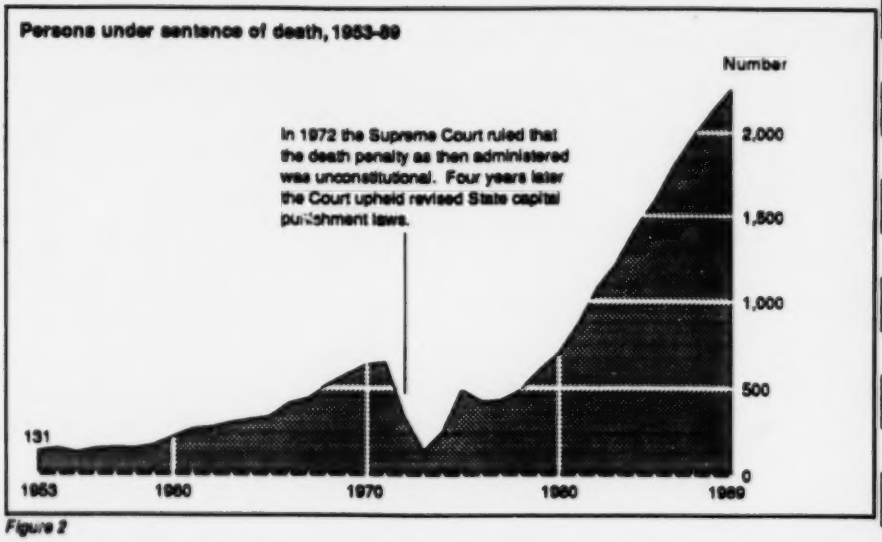

Figure 2

Capital punishment in the courts

In **Dugger** v. **Adams** (decided February 28, 1989) the Supreme Court dealt with the question of defense counsel's failure, on direct appeal, to raise a concern under Florida law with the sentencing judge's inaccurate instructions to prospective jurors. The 1978 case arose as a result of the first-degree murder of an 8-year-old child. During jury selection the judge advised each prospective juror that the court and not the jury was responsible for sentencing and that the jury's recommendation for sentencing was merely advisory. Defense counsel did not object to these instructions, nor was the issue raised in subsequent State appellate proceedings, though such a claim could have been made based on State law. When *Caldwell* v. *Mississippi* was subsequently decided on June 11, 1985, concluding that a prosecutor's comments had misinformed a jury in a capital case about the role of appellate review, Adams filed a second appeal, under the eighth amendment, challenging the judge's instructions as having misinformed the jurors about their sentencing responsibilities.

The Federal court held that the Caldwell claim was procedurally barred since it had not been raised in earlier appeals based on State law. The court of appeals, however, concluded that the legal basis had not been available at the time of direct appeal and found that the trial judge's instructions had violated the eighth amendment. The Supreme Court agreed with the district court and reversed the court of appeals, concluding that a procedural default barred review of the judge's instructions.

Hildwin v. **Florida** (decided May 30, 1989) confronted the Supreme Court with the question of whether the sixth amendment's right to a jury trial extended to the specific determination and enumeration of aggravating factors. In this case, after a conviction for first-degree murder, a separate sentencing proceeding was held in which the advisory jury recommended a sentence of death. Under Florida law the court was required, in writing, to specify the findings (aggravating factors) leading to a sentence of death, but the same requirement was not imposed on advisory juries. The Supreme Court of Florida affirmed the death sentence and the four aggravating factors detailed by the trial judge, concluding that the sixth amendment did not require a specific advisory jury finding that sufficient aggravating circumstances existed to permit a death sentence. The High Court affirmed the Florida court rulings, noting that the sixth amendment did not guarantee a right to jury sentencing.

The Supreme Court affirmed a reversal of a death sentence by the South Carolina Supreme Court in **South Carolina** v. **Gathers** (decided June 12, 1989). A prosecutor's closing arguments describing the personal qualities of the victim inferred from the victim's possession of a religious tract and voter registration card were found to be inappropriate and irrelevant to the circumstances of the crime.

Murray v. **Giarratano** (decided June 23, 1989) involved a class action suit by Virginia's indigent death row inmates, asserting a constitutional right to counsel at the State's expense to pursue collateral postconviction proceedings related to the convictions and sentences they had received. The Federal district court concluded that Virginia's provision of law libraries and "unit attorneys" was insufficient for the special needs of death row inmates for continuous assistance of counsel and meaningful access to the courts. This finding was affirmed by the court of appeals. A five-member majority of the Supreme Court reversed, concluding that neither the eighth amendment nor the due process clause required States to provide counsel for indi-

gent death row inmates in postconviction proceedings. The majority asserted that such proceedings are not a mandatory part of criminal justice, that there were adequate safeguards in the trial and appeal processes to assure fairness and reliability in conviction and sentencing, and that States should be given wide latitude in determining the nature of the legal assistance given in such proceedings.

Penry v. Lynaugh (decided June 26, 1989) raised eighth amendment concerns related to instructions to a Texas jury on the consideration of mitigating evidence and of subjecting a mentally retarded offender to the death penalty. The defendant, who raped, beat, and stabbed a woman to death with a pair of scissors, was determined to be competent to stand trial though he was mentally retarded. A Texas jury found him sane and convicted him of capital murder. The sentencing jury was instructed to consider three special issues during the penalty phase: (1) whether the conduct was committed deliberately and with the reasonable expectation that death would result; (2) whether there was a probability that the offender would pose a continuing threat to society; and (3) whether the killing was unreasonable in response to any provocation by the victim. Defense counsel objected to the trial court's failure to define selected terms in these instructions and to indicate that mitigating circumstances, such as the defendant's mental retardation, should be considered. The jury voted yes on each of the three special issues, and the court imposed a death sentence. The death sentence was upheld by the Texas Court of Criminal Appeals, the Federal district court, and the court of appeals. The Supreme Court, however, concluded that (1) Texas juries must be given instructions, upon request, that allow them to give full consideration to mitigating evidence; (2) the instructions to the jury must indicate that the jury could consider the weight of the mitigating evidence, in this case the defendant's mental retardation and abused childhood, in determining the defendant's culpability for sentencing; and (3) the eighth amendment does not categorically prohibit the execution of capital murderers with the defendant's mental abilities since he had been found neither incompetent for trial nor insane.

In **Stanford v. Kentucky** and **Wilkins v. Missouri** (both decided June 26, 1989) the High Court grappled with eighth amendment issues related to the age of capital defendants. In the Kentucky case the defendant was 17 years old at the time he robbed, raped, sodomized, and then murdered the victim. The Missouri case involved the robbery-murder of a convenience store owner, who was repeatedly stabbed after she begged for her life. The defendant was age 16 1/2 at the time of the crime. In both cases, juvenile court jurisdiction was waived, and the defendants were tried as adults. The Kentucky and Missouri appellate courts each affirmed the death sentences imposed after trial and sentencing, rejecting the claims of a right to treatment in the juvenile justice system and that execution of the offenders violated the eighth amendment. Petitions to the Supreme Court contended that the executions would be contrary to evolving standards of decency. The High Court affirmed the death sentences, concluding that (1) there was no common law tradition for prohibiting execution of those age 14 or older at the time of the capital crime and (2) there is no societal consensus or evolving community standard against the execution of those age 16 or 17 at the time of the offense because State laws authorize such executions and because there is no evidence that offenders of this age are less able to be deterred or less morally blameworthy than older offenders.

In **Powell v. Texas** (decided July 3, 1989) the High Court considered whether information about future dangerousness, gathered during a psychiatric examination for competency to stand trial, could be subsequently entered as evidence at the penalty phase when the defendant had not been warned of his right to silence (fifth amendment) or counsel (sixth amendment) before the examination. The Supreme Court concluded that the State had violated the defendant's fifth and sixth amendment rights by not advising him that any self-incrimination during the psychiatric examination could be used against him at the sentencing stage and by failing to notify his counsel that the psychiatric examination would encompass questions of future dangerousness.

Capital punishment laws

At yearend 1989 the death penalty was authorized by the statutes of 36 States and by Federal statute (table 1).[1] No jurisdiction's statutes were struck in whole or in part by State or Supreme Court decisions. No jurisdiction enacted new legislation authorizing the death penalty during the year.

Statutory changes

During 1989, 15 States revised statutory provisions relating to the death penalty. Six States added drug-related murders to the list of aggravating factors to be considered in the sentencing phase of a first-degree murder trial, and three States amended procedures to be used in the sentencing phase. By State, these statutory changes were as follows:

Arkansas — added drug trafficking to the definitions of felony murder and revised language relating to multiple murders.

Colorado — added use of an assault weapon to the list of aggravating factors.

Illinois — added drug conspiracy, residential burglary, and having a preconceived plan as aggravating factors.

Indiana — added drug trafficking; murders committed while in the custody of a sheriff or department of corrections employee or while on felony probation or parole; and battery, kidnaping and criminal confinement which resulted in the victim's death to the list of aggravating circumstances.

Louisiana — added drug trafficking to the list of aggravating circumstances.

Maryland — defined mentally retarded offenders and excluded them from receiving the death penalty.

Missouri — provided a detailed description of how evidence is to be considered by judges and juries during the sentencing phase.

Montana — added sexual assault of victims less than age 18 to the list of aggravating factors and enacted new descriptions of the procedures for selecting executioners and the handling of death warrants.

Oklahoma — added new descriptions of the procedures to be used in first-degree murder sentencing proceedings and for consideration of evidence in sentencing proceedings after remand from an appeals court.

(27)

[1] See *appendix II* for a listing of all current Federal death penalty statutes.

Oregon — added a new jury instruction related to the consideration of mitigating circumstances and amended procedures to be used in the sentencing phase of an aggravated murder conviction after remand from an appeals court.

Pennsylvania — added the murder of various public officials, drug activities, and victims less than age 12 to the list of aggravating factors.

South Dakota — added drug offenses to the list of aggravating factors and changed the language relating to the agency responsible for conducting executions.

Tennessee — replaced in their entirety the sections defining first-degree murder and the sentencing procedures to be used for first-degree murder.

Virginia — added attempted robbery and attempted rape to the list of aggravating circumstances.

Wyoming — added four additional aggravating factors (victims age 17 or younger or 65 or older, mentally or physically disabled victims, and selected felony murders) and revised the time permitted for automatic review.

Table 1. Capital offenses, by State, 1989

Alabama. Murder during kidnaping, robbery, rape, sodomy, burglary, sexual assault, or arson; murder of a peace officer, correctional officer, or public official; murder while under a life sentence; murder for pecuniary gain or contract; aircraft piracy; murder by a defendant with a previous murder conviction; murder of a witness to a crime (13A-5-40).

Arizona. First-degree murder.

Arkansas. Capital murder as defined by Arkansas statute (5-10-101). Felony murder; arson causing death; intentional murder of a law enforcement officer; murder of prison, jail, court, or correctional personnel or of military personnel acting in line of duty; multiple murders; intentional murder of a public officeholder or candidate; intentional murder while under life sentence; contract murder.

California. Treason; aggravated assault by a prisoner serving a life term; first-degree murder with special circumstances; train wrecking; perjury causing execution.

Colorado. First-degree murder; kidnaping with death of victim; felony murder.

Connecticut. Murder of a public safety or correctional officer; murder for pecuniary gain; murder in the course of a felony; murder by a defendant with a previous conviction for intentional murder; murder while under a life sentence; murder during a kidnaping; illegal sale of cocaine, methadone, or heroin to a person who dies from using these drugs; murder during first-degree sexual assault; multiple murders.

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder.

Georgia. Murder; kidnaping with bodily injury when the victim dies; aircraft hijacking; treason; kidnaping for ransom when the victim dies.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. Murder accompanied by at least 1 of 11 aggravating factors.

Indiana. Murder with aggravating circumstances.

Kentucky. Aggravated murder; kidnaping when victim is killed.

Louisiana. First-degree murder; treason.

Maryland. First-degree murder, either premeditated or during the commission of a felony.

Mississippi. Capital murder includes murder of a peace officer or correctional officer, murder while under a life sentence, murder by bomb or explosive, contract murder, murder committed during specific felonies (rape, burglary, kidnaping, arson, robbery, sexual battery, unnatural intercourse with a child, nonconsensual unnatural intercourse), and murder of an elected official; capital rape is the forcible rape of a child under 14 years old by a person 18 years or older; aircraft piracy.

Missouri. First-degree murder (565.020 RSMO).

Montana. Deliberate homicide; aggravated kidnaping when victim or rescuer dies; attempted deliberate homicide, aggravated assault, or aggravated kidnaping by a State prison inmate who has a prior conviction for deliberate homicide or who has been previously declared a persistent felony offender.

Nebraska. First-degree murder.

Nevada. First-degree murder.

New Hampshire. Contract murder; murder of a law enforcement officer; murder of a kidnaping victim; killing another after being sentenced to life imprisonment without parole.

New Jersey. Purposeful or knowing murder; contract murder.

New Mexico. First-degree murder; felony murder with aggravating circumstances.

North Carolina. First-degree murder (N.C.G.S. 14-17).

Ohio. Assassination; contract murder; murder during escape; murder while in a correctional facility; murder after conviction for a prior purposeful killing or prior attempted murder; murder of a peace officer; murder arising from specified felonies (rape, kidnaping, arson, robbery, burglary); murder of a witness to prevent testimony in a criminal proceeding or in retaliation (O.R.C. secs. 2929.02, 2903.01, 2929.04).

Oklahoma. Murder with malice aforethought; murder arising from specified felonies (forcible rape, robbery with a dangerous weapon, kidnaping, escape from lawful custody, first-degree burglary, arson); murder when the victim is a child who has been injured, tortured, or maimed.

Oregon. Aggravated murder.

Pennsylvania. First-degree murder.

South Carolina. Murder with statutory aggravating circumstances.

South Dakota. First-degree murder; kidnaping with gross permanent physical injury inflicted on the victim; felony murder.

Tennessee. First-degree murder.

Texas. Murder of a public safety officer, fireman, or correctional employee; murder during the commission of specified felonies (kidnaping, burglary, robbery, aggravated rape, arson); murder for remuneration; multiple murders; murder during prison escape; murder by a State prison inmate.

Utah. First-degree murder; aggravated assault by prisoners involving serious bodily injury.

Virginia. Murder during the commission or attempts to commit specified felonies (abduction, armed robbery, rape); contract murder; murder by a prisoner while in custody; murder of a law enforcement officer; multiple murders; murder of a child under 12 years during an abduction.

Washington. Aggravated first-degree premeditated murder.

Wyoming. First-degree murder including felony murder.

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Method of execution

At yearend 1989 lethal injection (20 States) and electrocution (14 States) were the most common methods of execution authorized (table 2). Six States authorized lethal gas; three States, hanging; and two States, a firing squad. Nine States authorized more than one method — lethal injection and an alternative method — generally at the election of the condemned prisoner or based on the date of sentencing.

Some States have stipulated an alternative to lethal injection, anticipating that it may be found unconstitutional. Each of the other four methods, previously challenged on eighth amendment grounds as cruel and unusual punishment, has been found to be constitutional. The method of execution for Federal offenders is that of the State in which the execution takes place.

Automatic review

Of the 36 States with capital punishment statutes at yearend 1989, 34 provided for an automatic review of all death sentences. Arkansas and Ohio had no specific provisions for automatic review. The Federal death penalty statute, enacted in 1988, does not provide for automatic review after a sentence of death is imposed. While most of the 34 States authorized an automatic review of both the conviction and sentence, Idaho and Indiana require review of the sentence only. Typically the review is undertaken regardless of the defendant's wishes and is conducted by the State's highest appellate court. If either the conviction or the sentence is vacated, the case may be remanded to the trial court for additional proceedings or for retrial. It is possible that, as a result of retrial or resentencing, the death sentence may be reimposed.

Minimum age

Nine States at the end of 1989 did not specify a minimum age at the time of the offense for which the death penalty may be imposed (table 3). In some States the minimum age is set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Ten States and the Federal death penalty statute specify a minimum age of 18; the remaining States have indicated various ages of eligibility between 10 and 17.

Table 2. Method of execution, by State, 1989

Lethal injection	Electrocution	Lethal gas	Hanging	Firing squad
Arkansas[a,b]	Alabama	Arizona	Montana[a]	Idaho[a]
Colorado	Arkansas[a,b]	California	New Hampshire[a,d]	Utah[a]
Delaware	Connecticut	Maryland	Washington[a]	
Idaho[a]	Florida	Mississippi[a,c]		
Illinois	Georgia	Missouri[a]		
Mississippi[a,c]	Indiana	North Carolina[a]		
Missouri[a]	Kentucky			
Montana[a]	Louisiana			
Nevada	Nebraska			
New Hampshire[a,d]	Ohio[e]			
New Jersey	Pennsylvania			
New Mexico	South Carolina			
North Carolina[a]	Tennessee			
Oklahoma	Virginia			
Oregon				
South Dakota				
Texas				
Utah[a]				
Washington[a]				
Wyoming				

Note: Federal executions are to be carried out according to the method of the State in which they are performed.

[a]Authorizes 2 methods of execution.

[b]Arkansas authorizes lethal injection for those whose capital offense occurred after 7/4/83; for those whose offense occurred before that date, the condemned prisoner may elect lethal injection or electrocution.

[c]Mississippi authorizes lethal injection for those convicted after 7/1/84; execution of those convicted prior to that date is to be carried out with lethal gas.

[d]New Hampshire authorizes hanging only if lethal injection could not be given.

[e]On 6/13/89 the Ohio Legislature passed a bill to adopt lethal injection as the method of execution. This bill was vetoed by the Governor on 7/3/89. Action to override the veto was pending in the legislature at yearend.

Table 3. Minimum age authorized for capital punishment, yearend 1989

Age less than 18	Age 18	None specified
Arkansas (15)	California	Alabama
Georgia (17)	Colorado	Arizona
Indiana (16)	Connecticut	Delaware
Kentucky (16)	Illinois	Florida
Louisiana (16)[a]	Maryland	Idaho
Mississippi (13)[b]	New Jersey	Nebraska[c]
Missouri (14)	New Mexico	Pennsylvania
Montana[d]	Ohio	South Carolina
Nevada (16)	Oregon	Washington
New Hampshire (17)	Tennessee	
North Carolina[e]	Federal system[f]	
Oklahoma (16)		
South Dakota[g]		
Texas (17)		
Utah (14)		
Virginia (15)		
Wyoming (16)		

Note: Ages at the time of the capital offense were indicated by the offices of the State attorneys general.

[a]Interpretation of attorney general's office based on La. R.S. 13:1571.1.

[b]Minimum age defined by statute is 13, but effective age is 16 based on an interpretation of U.S. Supreme Court decisions by the attorney general's office.

[c]Age can be a statutory mitigating factor.

[d]Youths as young as 12 may be tried as adults, but age less than 18 is a mitigating factor.

[e]Age required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; then, the age may be 14.

[f]Age 18; less than 18 but not younger than 14 if waived from juvenile court.

[g]Age 10, but only after a transfer hearing to try a juvenile as an adult.

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Table 4. Prisoners under sentence of death, by region and State, yearend 1988 and 1989

Region and State	Prisoners under sentence of death 12/31/88	Changes during 1989			Prisoners under sentence of death 12/31/89
		Received under sentence of death	Removed from death row (excluding executions)[a]	Executed	
U.S. total[b]	2,117	251	102	16	2,250
Federal	0	0	0	0	0
State	2,117	251	102	16	2,250
Northeast	124	17	9	0	132
Connecticut	1	1	0	0	2
New Hampshire	0	0	0	0	0
New Jersey	21	1	4	0	18
Pennsylvania	102	15	5	0	112
Midwest	337	26	17	1	345
Illinois	115	9	9	0	115
Indiana	51	1	4	0	48
Missouri	69	5	1	1	72
Nebraska	13	0	1	0	12
Ohio	89	11	2	0	98
South Dakota	0	0	0	0	0
South	1,246	145	68	13	1,310
Alabama	96	20	6	4	106
Arkansas	27	6	0	0	33
Delaware	7	0	0	0	7
Florida	287	37	33	2	289
Georgia	91	9	9	1	90
Kentucky	32	1	4	0	29
Louisiana	39	0	4	0	35
Maryland	14	2	0	0	16
Mississippi	47	3	5	1	44
North Carolina	79	9	0	0	88
Oklahoma	99	11	1	0	109
South Carolina	35	7	0	0	42
Tennessee	70	6	1	0	75
Texas	284	29	5	4	304
Virginia	39	5	0	1	43
West	410	63	8	2	463
Arizona	78	8	2	0	84
California	228	30	4	0	254
Colorado	3	0	0	0	3
Idaho	15	3	0	0	18
Montana	7	1	0	0	8
Nevada	45	10	1	2	52
New Mexico	2	0	1	0	1
Oregon	15	8	0	0	23
Utah	8	3	0	0	11
Washington	7	0	0	0	7
Wyoming	2	0	0	0	2

Note: States not listed and the District of Columbia did not authorize the death penalty as of 12/31/88. The attorney general's office in Vermont has concluded that, although they have not been found unconstitutional, existing Vermont death penalty statutes do not conform to constitutional requirements; thus, the State has been removed from the listing of jurisdictions authorizing the death penalty. Some of the figures shown for yearend 1988 are revised from those shown in *Capital Punishment 1988*, NCJ-118313. The revised figures include 18 inmates who either were reported late to the National Prisoner Statistics program or were not in the custody of State correctional authorities on 12/31/88 (4 in Pennsylvania, 2 in Ohio, 7 in Oklahoma , and 1 each in Missouri, Florida, Georgia, Tennessee, and Nevada) and exclude 25 inmates who were relieved of the death sentence on or before 12/31/88 (9 in Florida, 4 in Arizona, 3 in Illinois, and 1 each in Pennsylvania, North Carolina, South Carolina, Georgia, Tennessee, Alabama, Mississippi, Louisiana, and California).

[a]Includes 5 deaths due to natural causes (1 each in New Jersey, Illinois, Georgia, Kentucky, and California) and 1 death due to suicide (Georgia).

[b]Excludes 5 males held under Armed Forces jurisdiction with a military death sentence for murder.

Prisoners under sentence of death at yearend 1989

A total of 34 States reported 2,250 prisoners under sentence of death on December 31, 1989, an increase of 133 or 6% over the count at the end of 1988 (table 4). States with the largest number of prisoners under sentence of death were Texas (304), Florida (289), California (254), Illinois (115), and Pennsylvania (112).

Although 36 States (covering 78% of the Nation's adult population) had statutes authorizing the death penalty, 2 of these reported no prisoners under sentence of death at yearend (New Hampshire and South Dakota).

Of the 2,250 persons under sentence of death, 1,310 (58.2%) were in Southern States, 463 (20.6%) were in Western States, 345 (15.3%) were in States in the Midwest, and 132 (5.9%) were confined in the Northeastern States of Connecticut, New Jersey, and Pennsylvania.

During the year the largest percentage increase in the number of prisoners under sentence of death occurred in Western States with 12.9% (an additional 53 offenders), followed by an increase of 6.5% (8 additional offenders) in the Northeast, an increase of 5.1% (64 additional offenders) in the South, and a 3.2% increase (8 additional offenders) over 1988 in the Midwest. Eight States reported a decline in the number of prisoners at the end of 1989, compared to a year earlier: Louisiana reported four fewer than in 1988; Indiana, Kentucky, Mississippi, and New Jersey each with three fewer; and Georgia, Nebraska, and New Mexico each reported one fewer.

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Nearly 99% (2,225) of those under a sentence of death were males, and the majority, 58.2% (1,310), were white (table 5). Blacks constituted 40.1% of those under sentence of death, and another 1.6% were American Indians (23) or Asian Americans (14).

The race and sex of those under sentence of death at yearend 1989 were as follows:

	White	Black	Other
Male	1,295	893	37
Female	15	10	0

The States reported a total of 156 Hispanics under a death sentence, 6.9% of the total. During the year, 21 Hispanics were received under sentence of death, 6 were removed from death row, and 2 were executed (1 each in Florida and Texas). The largest numbers of Hispanic prisoners under sentence of death on December 31, 1989, were in Texas (45), California (35), Florida (23), and Arizona (17).

The median age of those under sentence of death was nearly 34 years. About 0.3% were under age 20, and 2.5% were 55 or older. The youngest offender under sentence of death was 18 years old (born July 1971); the oldest was 74 years old (born September 1915). About an equal percentage of the inmates under sentence of death, for whom information on education was available, had not gone beyond seventh grade (9.2%) or had attended some college (9.7%). The median level of education was 11th grade. Less than a third (29.1%) of the condemned inmates for whom data on marital status were available were married. Nearly half (45.6%) of those under sentence of death had never been married.

The 25 women under sentence of death at yearend 1989 were held in 13 States (table 6). Alabama (5), Ohio (4), and Texas (3) held the largest numbers. Since 1977 one woman has been executed.

Table 5. Demographic profile of prisoners under sentence of death, 1989

Characteristic	Yearend 1989	1989 admissions	1989 removals
Total number under sentence of death	2,250	250	118
Sex			
Male	98.9%	97.6%	95.8%
Female	1.1	2.4	4.2
Race			
White	58.2%	53.2%	49.2%
Black	40.1	45.2	50.0
Other[a]	1.6	1.6	.8
Ethnicity			
Hispanic	6.9%	8.4%	6.8%
Non-Hispanic	93.1	91.6	93.2
Age[b]			
Younger than 20	.3%	2.0%	0
20-24	8.5	23.2	7.6
25-29	21.6	27.6	27.1
30-34	26.4	21.6	23.7
35-39	17.5	10.0	18.6
40-54	23.2	13.6	21.2
55 or older	2.5	2.0	1.7
Median age	33.6 years	28.6 years	33.4 years
Education			
7th grade or less	9.2%	9.6%	14.8%
8th	9.0	5.6	16.7
9th-11th	37.2	43.9	37.0
12th	35.0	31.8	25.0
Any college	9.7	9.1	6.5
Median education	11th grade	11th grade	10th grade
Marital status			
Married	29.1%	23.5%	27.4%
Divorced/separated	23.2	19.7	21.2
Widowed	2.1	3.3	4.4
Never married	45.6	53.5	46.9

Note: Percentage and median calculations are based on those cases for which data were reported. Education data were not reported for 263 prisoners at yearend 1989, 52 prisoners admitted in 1989, and 10 prisoners removed in 1989. Data on marital status were not reported for 152 prisoners at yearend 1989, 37 prisoners admitted during 1989, and 5 prisoners removed in 1989.

[a]Consists of 23 American Indians and 14 Asians present at yearend of 1989, 2 American Indians and 2 Asians admitted during 1989, and 1 American Indian removed during 1989.

[b]The youngest person under sentence of death was a white inmate in North Carolina born in July 1971. The oldest was a white inmate in Arizona born in September 1915.

Entries and removals of persons under sentence of death

During 1989, 27 State prison systems reported receiving prisoners under sentence of death (table 4). Florida reported the largest number (37), followed by California (30), Texas (29), and Alabama (20).

Of the 251 prisoners received under sentence of death —

- all were convicted of murder
- 131 were white males, 109 were black males, 2 were American Indian males, 2 were Asian males, 2 were white females, and 5 were black females
- 21 were Hispanics.

Twenty States reported a total of 96 persons whose sentence of death was vacated or commuted or who were transferred to other jurisdictions. Florida (33), Illinois (8), Georgia (7), and Alabama (6) reported the largest numbers of such exits.

Table 6. Race of women under sentence of death on December 31, 1989, by State

State	Women		
	Total	White	Black
Total	25	15	10
Alabama	5	3	2
Ohio	4		4
Texas	3	2	1
Florida	2	2	
Missouri	2	2	
North Carolina	2	2	
Indiana	1	1	
Kentucky	1	1	
Mississippi	1		1
Nevada	1		1
Oklahoma	1	1	
Pennsylvania	1		1
Tennessee	1	1	

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Of the 96 persons whose death sentence was vacated, commuted, or removed during 1989 —

- 57 had their sentence vacated but their conviction upheld by a higher court
- 34 had both their conviction and sentence vacated
- 4 had their sentence commuted
- 1 female inmate was removed from Indiana and transferred to Ohio under another death sentence.

At yearend, 41 of the 96 were serving a reduced sentence (34 to life imprisonment, 6 to a sentence of more than 20 years, and 1 to a sentence of 20 years or less), 25 were awaiting a new trial, 22 were awaiting resentencing, 4 were released from prison as a result of commutation, and 1 was transferred to another State. The status of three cases was undetermined at the end of the year.

In addition, 6 persons died while under sentence of death in 1989. Five of these deaths resulted from natural causes — one each in New Jersey, Illinois, Georgia, Kentucky, and California. One death was a suicide (Georgia).

From 1977, the year after the Supreme Court reinstated the death penalty, through 1989, there were 3,326 admissions to State prisons under a sentence of death; 1,376 removals from a death sentence occurred over the same period as a result of appellate court decisions and higher court reviews, commutations, or death while under sentence; and 120 persons were executed. Among death-sentence admissions, 1,936 (58.2%) were white, 1,339 (40.3%) were black, and 51 (1.5%) were of other races. Among those removed from a death sentence other than by execution, 780 (56.7%) were white, 582 (42.3%) were black, and 14 (1.0%) were of other races. Of the 120 executed, 71 (59.2%) were white, and 49 (40.8%) were black.

Criminal history of inmates under sentence of death in 1989

Among those under sentence of death at yearend 1989 for whom criminal-history information was available, 69% had a history of felony convictions (table 7). Among those for whom information on prior homicide convictions was available, 9.2% had a previous conviction for that crime.

Among those for whom legal status at the time of the capital offense was reported, 41% had had an active criminal justice status: Half of these were on parole, while the rest had charges pending, were on probation, were prison inmates or escapees, or had some other criminal justice status. Excluding those with pending charges, more than 1 in 3 (34.5%) were already under sentence for another crime when the offense for which they were condemned occurred; in a number of States such status is considered an aggravating factor in capital sentencing.

The criminal-history patterns were similar for whites and blacks, although higher percentages of blacks than whites had prior felony convictions, had prior homicide convictions, or were on parole at the time of the capital offense.

Executions

Since 1930, when data on executions were first collected by the Federal Government, 3,979 executions have been conducted under civil authority (table 8).[2] Since the death penalty was reinstated by the Supreme Court in 1976, the States have executed 120 persons:

1977 — 1	1984 — 21
1979 — 2	1985 — 18
1981 — 1	1986 — 18
1982 — 2	1987 — 25
1983 — 5	1988 — 11
	1989 — 16

A total of 13 States have carried out executions since 1977. During the period, 70 white males, 41 black males, and 1 white female have been executed. The largest numbers of executions occurred in Texas (33), Florida (21), Louisiana (18), and Georgia (14). In 1989 four executions were carried out in both Alabama and Texas, two each in Florida and Nevada, and one each in Georgia, Mississippi, Missouri, and Virginia. The execution in Missouri was the first by that State since 1965. Those executed in 1989 were all male, eight whites and eight blacks.

[2]An additional 160 executions have been carried out under military authority since 1930.

Table 7. Criminal-history profile of prisoners under sentence of death, by race, 1989

	Prisoners under sentence of death					
	Number			Percent[a]		
	All races[b]	White	Black	All races[b]	White	Black
Prior felony conviction history						
Yes	1,456	823	615	69.3%	67.0%	73.4%
No	645	405	223	30.7	33.0	26.6
Not reported	149	82	65			
Prior homicide conviction history						
Yes	180	97	78	9.2%	8.5%	9.9%
No	1,780	1,043	709	90.8	91.5	90.1
Not reported	290	170	116			
Legal status at time of capital offense						
Charges pending	130	80	45	6.7%	7.0%	5.8%
Probation	142	92	48	7.3	8.1	6.2
Parole	410	200	207	21.0	17.5	26.6
Prison escapee	36	23	12	1.8	2.0	1.5
Prison inmate	59	39	20	3.0	3.4	2.6
Other status[c]	26	15	10	1.3	1.3	1.3
None	1,148	691	435	58.8	60.6	56.0
Not reported	299	170	126			
Median time elapsed since imposition of death sentence	51 mos.	49 mos.	54 mos.			

[a]Percents are based on those offenders for whom data were reported.

[b]Includes whites, blacks, and persons classified as members of other races.

[c]Includes 12 persons on furlough or work release, 4 persons on mandatory conditional release, 3 persons out on bail, 2 persons residing in halfway houses, 1 person confined in a local jail, 1 person under house arrest, 1 for whom charges were pending from the U.S. Army, 1 assigned to road gang work, and 1 on an accelerated release program.

Since 1977 a total of 3,746 offenders have been under a death sentence for varying lengths of time (table 9). There were 120 executions (3.2% of those at risk) and 1,376 removals (36.7% of those at risk) during this period. A slightly higher percentage of whites than blacks were executed (3.3% versus 3.2%), and blacks had a slightly higher removal rate by means other than execution (37.9% for blacks versus 36.1% for whites).

For those executed since 1977, the average time between the imposition of the most recent sentence received and execution was 6 years and 7 months (table 10). For the 16 prisoners executed during 1989, the average time spent under a death sentence was 7 years and 11 months, about 1 year and 3 months longer than for those executed in 1988. Black prisoners executed in 1989 had spent an average of 9 years and 4 months awaiting execution; whites, 6 years and 6 months.

The methods used for the 120 persons executed between 1977 and 1989 were —

	Executions, 1977-89		
	All races	White	Black
Total	120	71	49
Lethal injection	42	32	10
Electrocution	72	36	36
Lethal gas	5	2	3
Firing squad	1	1	0

Table 8. Number of persons executed, by jurisdiction in rank order, 1930-89

State	Number executed Since 1930	Since 1977
U.S. total	3,979	120
Georgia	380	14
Texas	330	33
New York	329	
California	292	
North Carolina	266	3
Florida	191	21
Ohio	172	
South Carolina	164	2
Mississippi	158	4
Pennsylvania	152	
Louisiana	151	18
Alabama	142	7
Arkansas	118	
Kentucky	103	
Virginia	100	8
Tennessee	93	
Illinois	90	
New Jersey	74	
Maryland	68	
Missouri	63	1
Oklahoma	60	
Washington	47	
Colorado	47	
Indiana	43	2
West Virginia	40	
District of Columbia	40	
Arizona	38	
Federal system	33	
Nevada	33	4
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Utah	16	3
Kansas	15	
Delaware	12	
New Mexico	8	
Wyoming	7	
Montana	6	
Vermont	4	
Nebraska	4	
Idaho	3	
South Dakota	1	
New Hampshire	1	
Wisconsin	0	
Rhode Island	0	
North Dakota	0	
Minnesota	0	
Michigan	0	
Maine	0	
Hawaii	0	
Alaska	0	

Table 9. Percentage of those under sentence of death who were executed or who received other dispositions, by race, 1977-89

Race	Total under sentence of death, 1977-89[b]	Prisoners executed Number	Prisoners executed Percent of total	Prisoners who received other dispositions[a] Number	Prisoners who received other dispositions[a] Percent of total
All races[c]	3,746	120	3.2%	1,376	36.7%
White	2,161	71	3.3	780	36.1
Black	1,534	49	3.2	582	37.9

[a]Includes persons removed from a sentence of death because of statutes struck down on appeal, sentences or convictions vacated, commutations, or death other than by execution. Of the 1,376 removals, 34 resulted from death from natural causes, 27 were by suicide, 2 were killed during escape attempts, 6 were murdered by other inmates, and 1 was by death resulting from a drug overdose.

[b]Includes those under sentence of death at the beginning of 1977 (420) plus all new admissions under sentence of death between 1977 and 1989 (3,326).

[c]Includes whites, blacks, and persons classified as members of other races.

Table 10. Time between imposition of death sentence and execution, by race, 1977-89

Year of execution	Number executed All races	White	Black	Average elapsed time from sentence to execution for: All races	White	Black
Total	120	71	49	79 mos.	71 mos.	91 mos.
1977-83	11	9	2	51	49	58
1984	21	13	8	74	76	71
1985	18	11	7	71	65	80
1986	18	11	7	87	78	102
1987	25	13	12	86	78	96
1988	11	6	5	80	72	89
1989	16	8	8	95	76	112

Note: For these executions, average time was calculated from the most recent sentencing date. The range for elapsed time for the 120 executions was 3 months to 170 months. Some numbers may be revised from those previously reported.

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Appendix I. Current status of inmates under sentence of death, 1979-89

Since 1973 a total of 3,927 individuals have been sentenced to death (appendix table 1). The table shows the status of those received in each year with respect to their death sentence, as of December 31, 1989. For example, of the 187 persons whose sentence to death occurred in 1978, 22 have been executed, 3 have died while in confinement, 21 have been relieved of the death sentence because courts struck down wholly or in part the statutes under which they were sentenced, 33 have had their conviction overturned on appeal, 54 have had their sentence overturned on appeal, 8 have had their sentence commuted, and 46 were still under a death sentence at yearend 1989. Of the 2,250 persons under sentence of death on December 31, 1989, 171 or 7.6% were sentenced prior to 1980.

Of the 2,250 persons under sentence of death at yearend 1989, Florida, Georgia, Texas, and Utah had the inmates who had served the longest under sentence of death among all condemned inmates (appendix table 2). By contrast, Colorado, Connecticut, and New Mexico had no inmates sentenced prior to 1987.

Appendix II. Federal laws providing for the death penalty

Since the Supreme Court's decision in *Furman* v. *Georgia* in 1972, striking down the death penalty as then applied, three death penalty statutes have been enacted by the Congress:

• (A) Any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A) or section 960(b)(1) who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing

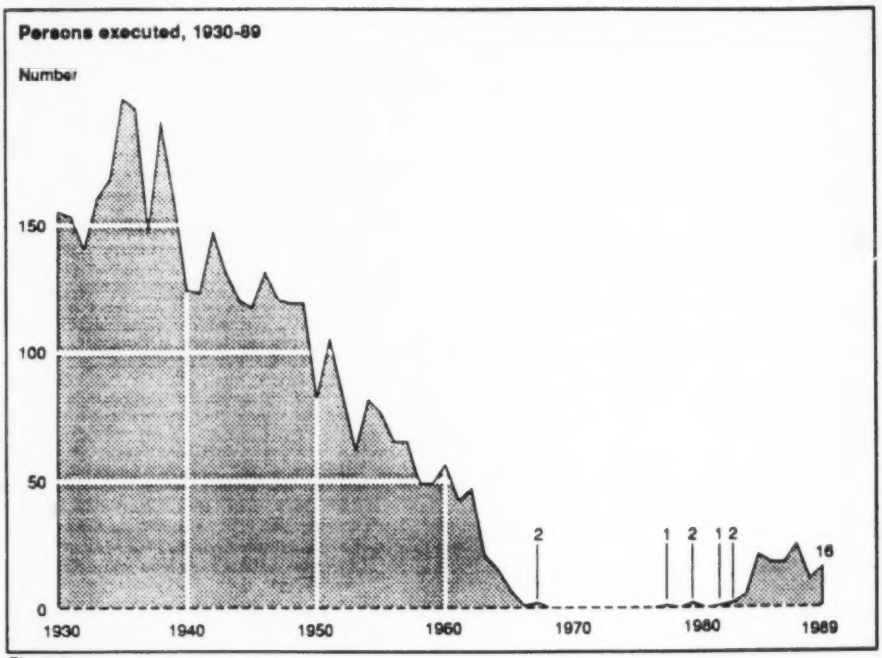

Figure 3

Appendix table 1. Prisoners sentenced to death and the outcome of their sentence, by year of sentencing, 1973-89

Year of sentence	Number sentenced to death	Number of prisoners removed from death row							Under sentence of death, 12/31/89
				Appeal or higher courts overturned:					
		Executed	Died	Death penalty statute	Conviction	Sentence	Sentence commuted	Other or unknown reasons	
1973	42	2	0	14	9	8	9	0	0
1974	151	8	4	65	15	29	21	0	9
1975	299	5	3	171	22	61	21	2	14
1976	234	8	5	136	16	37	15	0	17
1977	140	11	1	40	26	32	7	0	23
1978	187	22	3	21	33	54	8	0	46
1979	157	8	7	2	26	46	6	0	62
1980	185	12	10	3	29	42	4	0	85
1981	239	14	7	0	34	51	3	1	129
1982	274	10	9	0	20	48	4	0	185
1983	261	9	6	1	14	39	2	2	188
1984	292	8	7	1	28	43	4	6	195
1985	288	1	2	1	18	36	2	1	227
1986	315	0	6	0	20	32	3	0	254
1987	304	1	3	1	14	16	0	1	268
1988	309	1	3	0	1	5	0	0	299
1989	250	0	1	0	0	0	0	0	249
Total 1973-89	3,927	120	77	456	325	577	109	13	2,250

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results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and (B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II of this chapter who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death (21 U.S.C. § 848(e)).

- Espionage by a member of the Armed Forces: communication of information to a foreign government relating to nuclear weaponry military spacecraft or satellites, early warning systems, war plans, communications intelligence or cryptographic information, or any other major weapons or defense strategy (10 U.S.C. § 906(a))

- Death resulting from aircraft hijacking (49 U.S.C. §§ 1472 and 1473)

At the end of 1989, five males were awaiting execution under a military death sentence for murder. The following capital punishment provisions, which were enacted prior to the *Furman* decision, remain in the United States Code:

- Murder while a member of the Armed Forces (10 U.S.C. § 918)
- Destruction of aircraft, motor vehicles, or related facilities resulting in death (18 U.S.C. §§ 32-34)
- Retaliatory murder of a member of the immediate family of law enforcement officials (18 U.S.C. § 115(b)(3) [by cross-reference to 18 U.S.C. § 1111])
- Murder of a member of Congress, an important executive official, or a Supreme Court Justice (18 U.S.C. § 351 [by cross-reference to 18 U.S.C. § 1111])
- Espionage (18 U.S.C. § 794)
- Destruction of government property resulting in death (18 U.S.C. § 844(f))
- First-degree murder (18 U.S.C. § 1111)
- Mailing of injurious articles with the intent to kill or resulting in death (18 U.S.C. § 1716)
- Assassination or kidnaping resulting in the death of the President or Vice President (18 U.S.C. § 1751 [by cross-reference to 18 U.S.C. § 1111])
- Willful wrecking of a train resulting in death (18 U.S.C. § 1992)
- Bank-robbery-related murder or kidnaping (18 U.S.C. § 2113)
- Treason (18 U.S.C. § 2381).

Appendix table 2. Prisoners under sentence of death on December 31, 1989, by State and year of sentencing

State	Year of death sentence																Under sentence of death, 12/31/89
	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	
Total sentenced and remaining on death row, 12/31/89	9	14	17	23	46	62	85	129	185	188	195	227	254	268	299	249	2,250
Florida	3	7	6	5	15	14	11	13	22	19	26	19	20	30	40	37	289
Georgia	3	1	3	5	5	2	3	4	7	5	9	6	11	12	6	9	90
Texas	2	2	4	6	10	6	15	19	22	27	17	36	39	36	34	29	304
Utah	1									1		3		1	2	3	11
Montana		3								1				1	2	1	8
Nebraska		1			4	1	1	1			2		1		1		12
Arizona			1	1		8	9	4	9	6	5	7	2	11	13	8	84
Mississippi			1	2			3	6	6	1	1	3	6	9	3	3	44
Arkansas				2		1	1	7	3	1		3	3	3	3	6	33
Nevada				1		2	1	3	5	5	4	5	4	5	7	10	52
Oklahoma				1	2	2	2	3	4	8	14	9	16	15	22	11	109
California					2	10	4	21	34	31	26	16	24	26	31	29	254
Indiana					1	1	2	4	2	6	6	9	4	4	8	1	48
Kentucky					1		1	2	5	4	1	2	7	3	2	1	29
Louisiana					1		1		3	3	5	10	3	8	1		35
Tennessee					5	1	4	6	4	6	7	11	9	10	6	6	75
Alabama						1	2	5	16	12	9	8	8	13	12	20	106
Illinois						3	12	9	6	13	9	13	19	9	13	9	115
Maryland						1		2	5		4		1		1	2	16
Missouri						1	2	6	6	2	6	9	9	9	17	5	72
North Carolina						2	4	4	3	6	5	16	7	16	16	9	88
South Carolina						3	3	3	1	5	4	4	8		4	7	42
Virginia						3	1	1	3	2	8	1	10	6	3	5	43
Delaware							2		2				1	1	1		7
Pennsylvania							1	5	7	10	8	13	18	13	22	15	112
Idaho								1	4		5	1	1		3	3	18
Ohio									2	12	15	18	15	12	14	10	98
Washington									2	2		1	1	1			7
Wyoming									2								2
New Jersey												4	6	6	1	1	18
Oregon													1	3	11	8	23
Colorado														3			3
Connecticut														1		1	2
New Mexico														1			1

Note: Data are for the most recent date a death sentence was imposed.

Methodological note

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) Inmates are originally added to the National Prisoner Statistics (NPS) death-row counts not at the time the court hands down the sentence but at the time they are admitted to a State or Federal correctional facility. (2) Subsequently, admissions to death row or releases as a result of a court order are attributed to the year in which the sentence or court order occurred; prior-year counts are, therefore, adjusted to reflect the actual dates of court decisions (see note, table 4). (3) NPS death-row counts are always for the last day of the calendar year and thus will differ from counts for more recent periods.

Appendix table 3. Execution, by State and method, 1977-89

State	Number executed	Method of execution: Lethal injection	Electrocution	Lethal gas	Firing squad
Total	120	42	72	5	1
Texas	33	33			
Florida	21		21		
Louisiana	18		18		
Georgia	14		14		
Virginia	8		8		
Alabama	7		7		
Mississippi	4			4	
Nevada	4	3		1	
North Carolina	3	3			
Utah	3	2			1
Indiana	2		2		
South Carolina	2		2		
Missouri	1	1			

Note: This table shows the distribution of execution methods used since 1977. As can be seen, the most frequently used method, electrocution, was used in 60% of the executions carried out. Lethal injection accounted for 35% of the executions. Two States, Nevada and Utah, have employed 2 methods.

1989 U.S. Supreme Court decisions cited

Dugger, Secretary, Florida Department of Corrections, et al. v. **Adams**, 57 U.S.L.W. 4276

Hildwin v. **Florida**, 57 U.S.L.W. 3778

South Carolina v. **Gathers**, 57 U.S.L.W. 4629

Murray, Director, Virginia Department of Corrections, et al. v. **Giarratano, et al.**, 57 U.S.L.W. 4889

Stanford v. **Kentucky**, and **Heath A. Wilkins, Petitioner** v. **Missouri**, 57 U.S.L.W. 4973

Penry v. **Lynaugh, Director, Texas Department of Corrections**, 57 U.S.L.W. 4958

Powell v. **Texas**, 57 U.S.L.W. 3857

State notes

Arkansas — Acts 97 and 856 of 1989. Act 97 5-10-101(a)(1) of the Arkansas Code Ann. to include felonious delivery of a controlled substance as a circumstance defining felony murder. Act 856 amends 5-10-101(a)(4) by deleting multiple murders from the definition of capital murder and substituting that a person commits a capital murder if in "the premeditated and deliberated purpose of causing the death of another person, he causes the death of any person." Effective 7/3/89.

Colorado — revised 16-11-103(6)(j) to include the use of an assault weapon as an aggravating factor in determining whether the death penalty should be imposed. Effective 7/1/89.

Illinois — revised Chapter 38, 9-1(b)(c) and (b)(a), Ill. Rev. Stat., to incorporate additional aggravating factors in the determination of death penalty eligibility: murder in the course of the felony of criminal drug conspiracy; murder in the course of residential burglary; and murder committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take human life. Effective 1/1/90.

Indiana — revised Indiana Code 35-50-2-9 detailing aggravating circumstances by adding statutory cross-references to the categories of felony murder; adding dealing in cocaine or a narcotic drug as an aggravating circumstance; adding murders committed while in the custody of a county sheriff or the department of corrections or while on felony probation or parole as aggravating factors; and adding battery (class C or D felony), kidnaping, and criminal confinement which resulted in the victim's death as aggravating circumstances. Effective 7/1/89.

Louisiana — added an aggravating circumstance to Article 905.4 to the definition of first-degree murder (La. Revised Statutes 14:30) incorporating the distribution, exchange, sale, or purchase of a controlled dangerous substance. Effective 6/29/89.

Maryland — revised Article 27, 412(3) and (3)(f), dealing with the punishment for murder by defining the term "mentally retarded" and providing an exclusion from a sentence of death for persons found to be mentally retarded. "Mentally retarded" means the individual has significantly subaverage intellectual functioning as evidenced by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and impairment in adaptive behavior, and the mental retardation is manifested before the individual attains the age of 22. Effective 7/1/89.

Missouri — revised 565.032 of the Revised Statutes of Missouri to incorporate a detailed description of how evidence is to be considered by sentencing judges and juries for assessing the punishment in first-degree murder cases for which the death penalty is authorized and enumerates 16 aggravating and 7 mitigating circumstances. Effective 8/28/89.

Montana — added an aggravating circumstance to 46-18-303(9) for deliberate homicide committed during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years old. Amended 46-19-103 dealing with the setting of execution dates, the process of selecting a method of execution; the content and delivery of death warrants; the selection, training, and anonymity of executioners; and the final disposition of the death warrant after execution. Amended 46-19-204 relating to procedures for reissuing a death warrant after determination that a pregnancy has been concluded. Effective 10/1/89.

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Oklahoma — amendments to 701.10 and 701.10(a) describing procedures for the conduct of sentencing proceedings after conviction for first-degree murder and procedures to be used in admitting evidence in sentencing proceedings for first-degree murder-convictions after remand from an appeals court. Effective 6/3/89.

Oregon — amendments to ORS 163.150 on sentencing procedures for aggravated murder added a fourth question from the judge to the jury to consider, if constitutionally required, the defendant's character and background and the circumstances of the offense as factors which may reduce the defendant's culpability when assessing whether a death sentence should be imposed. The second revision amended procedures for retrial of the penalty phase after remand from an appellate court arising out of a finding of prejudicial error in the sentencing phase following conviction for aggravated murder. Effective 7/19/89 and 7/24/89.

Pennsylvania — act 99 of 1989 amended Title 42 by providing additional aggravating factors to be considered in first-degree murder sentencing proceedings. The changes added the killing of various categories of public officials as an aggravating circumstance, included drug felonies in the categories of felony murder, added aggravating factors relating to killings arising out of illegal drug activities, and added the murder of a victim under 12 years old. Effective 12/22/89.

South Dakota — added an aggravating circumstance to 23A-27A-1(10) for death-eligible offenses arising out of the manufacturing, distribution, or disposing of illegal substances listed in the controlled substances schedules. Revised 23A-27A-33 to use the words "department of corrections" in specifying responsibility for identifying a location and the equipment needed to carry out executions. Effective 7/1/89.

Tennessee — entirely replaced T.C.A. 39-13-202 through 205 defining first-degree murder, sentencing procedures after conviction for first-degree murder, waiver of juries at either the determination-of-guilt or penalty phases, and procedures for automatic appellate review of death sentences by the Tennessee Supreme Court. Effective 11/1/89.

Virginia — amended 182-31 to include attempted armed robberies and attempted rapes in the definition of capital murders. Effective 7/1/89.

Wyoming — amended 6-2-102 to incorporate four additional aggravating circumstances that include: victims age 17 or younger or 65 or older; victim who was vulnerable due to mental or physical disability; purposeful murders arising out of the commission or attempt to commit robbery, sexual assault, arson, burglary, or kidnaping; defendant poses a continuing threat of future dangerousness. Revised 6-2-103 and raised the time required for automatic review of death sentences from 60 to 120 days, raised the period for extension of this time from 30 to 60 days, and repealed a proportionality review requirement by the Supreme Court of Wyoming. Effective 3/6/89.

Bureau of Justice Statistics Bulletins are written principally by BJS staff. This Bulletin was written by Lawrence A. Greenfeld, corrections unit chief. Tom Hester edited this Bulletin. Marilyn Marbrook, publications unit chief, administered report production, assisted by Betty Sherman, Yvonne Boston, and Jayne Pugh. Data were collected and tabulated by Arlene Rasmussen and other staff of the U.S. Bureau of the Census under the supervision of Larry McGinn and Gertrude Odom.

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The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

Suggestions for Leading *The Death Penalty in the United States*

All discussion groups are different. The participants, the dynamics of your particular group, and the nature of the subject at hand make this so. The following suggestions are not intended to be definitive, but rather to offer general guidelines to help structure discussions using this material.

The aim of small-group discussion is for participants to learn from each other. When the policy issue under discussion is primarily an ethical concern, as is the case in this program, discussion is prompted by and in turn generates strong and deeply held feelings. This makes for special kinds of challenges and potential rewards for the group. The leader's job is to create an atmosphere respectful of all feelings and to challenge the participants to go beyond their individual opinions in order to give full consideration to alternative points of view. If you are successful as a leader, the participants should be unable to identify your personal viewpoint on the subject even at the end of the discussion.

Some general notes on leading discussions on ethical issues

Following are some remarks specific to leading discussions on ethical issues:

- Sometimes when people hear arguments against their own positions, they become involved in attempting to refute the arguments rather than listening and understanding the other's point of view. If this is happening in your group, you can encourage the development of listening skills by asking one group member to repeat or paraphrase what another said before responding to it. Asking participants to build on the ideas of others enhances a cooperative rather than a competitive spirit.

- While people cannot believe something they consider to be false, they must be willing to entertain the possibility that some of their beliefs are, in fact, false.

- Ask group members to imagine themselves as supporters of each of the viewpoints in turn by consciously identifying which underlying beliefs are most compelling. Taking this sympathetic approach to each position can lead to creative re-examination of long-held beliefs and a new appreciation of others' beliefs.

Preparing for the discussion

The introductory letter and "A Framework for Discussion" will give you a quick overview of the issue and the way it is presented in this material. You should carefully read the rest of the participants' materials several times so that you can clearly describe the four positions. Important general advice for leading a discussion is offered in "Leading a Study Circle."

Explaining the ground rules

You may wish to begin by saying something like the following: "My role is to assist in keeping discussion focused and moving along. Your role is not to change others' minds, but

to deeply examine your own beliefs. This means that carefully listening to others is critical. I hope that you will take this opportunity to argue from a point of view that you don't consider your own."

Introductions and starting the discussion

To kick off the session, ask participants to introduce themselves. In order to give the group a sense of focus, you may wish to lay out a general plan for how the two-hour session will proceed: 1) a general discussion of the problem of violent crime in our society and what should be done about it (remainder of the first half-hour); 2) understanding the positions as presented in this material (about half an hour); and 3) a critical examination and debate of the positions, and closing (the remaining hour).

To begin the consideration of the topic, you might wish to generate discussion by citing a recent example of violent crime that has made headlines either locally or nationally. Ask participants to share their reactions to this in light of what our criminal justice system ought to do. What type of penalty would be consistent with the kind of criminal justice system we ought to have? What should be the purposes of punishment in general (before moving on to a discussion specific to capital punishment)?

Understanding the positions

Give the participants a few minutes to review "A Framework for Discussion" and "The Positions in Brief."

In this part of the discussion, your aim is to help the group members understand the positions before they go on to debate their relative merits. One way to introduce the material is to ask if anyone would be willing to defend one of the positions to the group, even if it is not a position of that person's choice. This kind of role playing can set a tone of openness and encourage the group to consider unpopular opinions. At this stage of the discussion, other participants may ask questions to clarify the content of the positions, but debate should wait until all four positions have been presented.

Discussing the positions

At this point, ask participants to discuss the positions based upon their actual preferences. A thorough exploration of the positions will reveal a complex set of presuppositions underlying the views and a variety of implications that follow from them. Leaders might want to ask participants which of the supporting points or counterpoints seem most persuasive for each of the positions, and why. "Suggested Discussion Questions" may come in handy for you during this part of the discussion, especially if the group (or the vocal part of it) is reaching early consensus. Each participant should feel comfortable to express a minority opinion; there should be no feel of a "hidden agenda." Your questions should assist the members in thinking about the strengths and weaknesses of each position, and in thinking about the possible policy implications of each position.

Reaching consensus should not be the goal of the discussion. Disagreement is likely to be more constructive, however, when you help the group see any important areas of agreement.

Closing the discussion

You might close the discussion by asking whether anyone's views have changed or become more clear to them during the course of the discussion. Those who came into the discussion without a clear stand and who may have been quiet up until this point can be brought into the conversation in this way.

Since policymakers at all levels are considering the issue of the death penalty, encourage group members to communicate their views to their elected representatives in the state legislature and in the U.S. Congress. Make sure that you have handy the names and addresses of legislators to give to participants.

Suggested Discussion Questions

In the course of the session, if there is difficulty sustaining discussion, the leader may choose to ask participants to consider some of the following questions.

Starting the discussion

1. *Cite an example of a violent crime that has made recent headlines, either locally or nationally. Ask:* Is punishment justified in this case? If so, what kind and for what purpose? *(This touches on the question of what should be regarded as the aims or purposes of punishment in our criminal justice system. You may wish to list these as possibilities for participants to consider: prevention (to hinder that particular criminal from committing another crime); deterrence (to prevent others from committing similar crimes); retribution (either to force the criminal to pay a debt owed to society or to lessen the need or urge for personal revenge on the part of the victim or the victim's family; and rehabilitation (to reform the criminal). You may point out to participants that this list of the aims of punishment appears within the body of Position 1.*

2. Would proponents of the death penalty find capital punishment justified in this case? If not, would it be justified if this case were different in some specific way(s)? If so, for what other kinds of crimes would capital punishment be justified?

Understanding the positions

1. *Of any position, ask:* What are the strongest arguments in favor of this position?

2. *You might ask a participant to "take on" the perspective of a position he or she does not agree with. Ask the role player to use the strongest possible arguments underlying that viewpoint to defend it.*

3. *Of any position, ask:* What public policy would follow from this position?

Debating the positions

In order to bring out the strengths and weaknesses of various positions, you might refer to particular cases or conditions, as in the questions below:

1. What, if anything, can be accomplished with a sentence of death that cannot be accomplished by a sentence of life in prison without the chance of parole?

2. Should the death penalty be allowed as a voluntary alternative to life imprisonment without the chance of parole?

3. In their rulings on the death penalty, some of the Supreme Court justices maintained that the notion of "cruel and unusual punishment" should be interpreted in terms of evolving standards of morality. Who should determine whether contemporary standards of decency allow for the death penalty? Juries? Legislatures? What should be the role of the public in this decision?

4. If you knew that the death penalty deterred some acts of violent crime, would you be persuaded that it should be used?

5. Conversely, if you knew that the death penalty had a brutalizing effect on society, would you be persuaded that it should not be used?

6. Is the fact that someone has committed a crime sufficient for punishing the person, or must there be some practical function that is served by the punishment? For instance, consider the case of an 88-year-old man who killed his aged and infirm wife at her request because she was in excruciating pain. He intentionally killed his wife and confesses to feeling no remorse. Should society punish him for his crime? If so, how should the severity of the punishment be determined?

Closing the discussion

1. What are the main points of agreement and disagreement that have emerged during this discussion?

2. Have your views on the death penalty changed or become more clear to you as a result of this discussion? In what ways?

3. What advice would you give to policymakers who are making decisions about this issue?

Leading a Study Circle

The study circle leader is the most important person in determining its success or failure. It is the leader's responsibility to moderate the discussion by asking questions, identifying key points, and managing the group process. While doing all this, the leader must be friendly, understanding, and supportive.

The leader does not need to be an expert. However, thorough familiarity with the reading material and previous reflection about the directions in which the discussion might go will make the leader more effective and more comfortable in this important role.

The most difficult aspects of leading discussion groups include keeping discussion focused, handling aggressive participants, and keeping one's own ego at bay. A background of leading small group discussions or meetings is helpful. The following suggestions and principles of group leadership will be useful even for experienced leaders.

• **"Beginning is half," says an old Chinese proverb.** Set a friendly and relaxed atmosphere from the start. A quick review of the suggestions for participants will help ensure that everyone understands the ground rules for the discussion.

• **Be an active listener.** You will need to truly hear and understand what people say if you are to guide the discussion effectively. Listening carefully will set a good example for participants and will alert you to potential conflicts.

• **Stay neutral and be cautious about expressing your own values.** As the leader, you have considerable power with the group. That power should be used only for the purpose of furthering the discussion and not for establishing the correctness of a particular viewpoint.

• **Utilize open-ended questions.** Questions such as, "What other possibilities have we not yet considered?" will encourage discussion rather than elicit short, specific answers and are especially helpful for drawing out quiet members of the group.

• **Draw out quiet participants.** Do not allow anyone to sit quietly or to be forgotten by the group. Create an opportunity for each participant to contribute. The more you know about each person in the group, the easier this will be.

• **Don't be afraid of pauses and silences.** People need time to think and reflect. Sometimes silence will help someone build up the courage to make a valuable point. Leaders who tend to be impatient may find it helpful to count silently to 10 after asking a question.

• **Do not allow the group to make you the expert or "answer person."** You should not play the role of final arbiter. Let the participants decide what they believe. Allow group members to correct each other when a mistake is made.

• **Don't always be the one to respond to comments and questions.** Encourage interaction among the group. Participants should be conversing with each other, not just with the leader. Questions or comments that are directed at the leader can often be deflected to another member of the group.

• **Don't allow the group to get hung up on unprovable "facts" or assertions.** Disagreements about basic facts are common for con

troversial issues. If there is debate over a fact or figure, ask the group if that fact is relevant to the discussion. In some cases, it is best to leave the disagreement unresolved and move on.

• **Do not allow the aggressive, talkative person or faction to dominate.** Doing so is a sure recipe for failure. One of the most difficult aspects of leading a discussion is restraining domineering participants. Don't let people call out and gain control of the floor. If you allow this to happen the aggressive will dominate, you may lose control, and the more polite people will become angry and frustrated.

• **Use conflict productively and don't allow participants to personalize their disagreements.** Do not avoid conflict, but try to keep discussion focused on the point at hand. Since everyone's opinion is important in a study circle, participants should feel safe saying what they really think – even if it's unpopular.

• **Synthesize or summarize the discussion occasionally.** It is helpful to consolidate related ideas to provide a solid base for the discussion to build upon.

• **Ask hard questions.** Don't allow the discussion to simply confirm old assumptions. Avoid following any "line," and encourage participants to re-examine their assumptions. Call attention to points of view that have not been mentioned or seriously considered, whether you agree with them or not.

• **Don't worry about attaining consensus.** It's good for the study circle to have a sense of where participants stand, but it's not necessary to achieve consensus. In some cases a group will be split; there's no need to hammer out agreement.

• **Close the session with a brief question that each participant may respond to in turn.** This will help them review their progress in the meeting and give a sense of closure.

Suggestions for Participants

The goal of a study circle is not to learn a lot of facts, or to attain group consensus, but rather to deepen each person's understanding of the issue. This can occur in a focused discussion when people exchange views freely and consider a variety of viewpoints. The process -- democratic discussion among equals -- is as important as the content.

The following points are intended to help you make the most of your study circle experience and to suggest ways in which you can help the group.

• **Listen carefully to others.** Make sure you are giving everyone the chance to speak.

• **Maintain an open mind.** You don't score points by rigidly sticking to your early statements. Feel free to explore ideas that you have rejected or failed to consider in the past.

• **Strive to understand the position of those who disagree with you.** Your own knowledge is not complete until you understand other participants' points of view and why they feel the way they do. It is important to respect people who disagree with you; they have reasons for their beliefs. You should be able to make a good case for positions you disagree with. This level of comprehension and empathy will make you a much better advocate for whatever position you come to.

• **Help keep the discussion on track.** Make sure your remarks are relevant; if necessary, explain how your points are related to the discussion. Try to make your points while they are pertinent.

• **Speak your mind freely, but don't monopolize the discussion.** If you tend to talk a lot in groups, leave room for quieter people. Be aware that some people may want to speak but are intimidated by more assertive people.

• **Address your remarks to the group rather than the leader.** Feel free to address your remarks to a particular participant, especially one who has not been heard from or who you think may have special insight. Don't hesitate to question other participants to learn more about their ideas.

• **Communicate your needs to the leader.** The leader is responsible for guiding the discussion, summarizing key ideas, and soliciting clarification of unclear points, but he/she may need advice on when this is necessary. Chances are you are not alone when you don't understand what someone has said.

• **Value your own experience and opinions.** Everyone in the group, including you, has unique knowledge and experience; this variety makes the discussion an interesting learning experience for all. Don't feel pressured to speak, but realize that failing to speak means robbing the group of your wisdom.

• **Engage in friendly disagreement.** Differences can invigorate the group, especially when it is relatively homogeneous on the surface. Don't hesitate to challenge ideas you disagree with. Don't be afraid to play devil's advocate, but don't go overboard. If the discussion becomes heated, ask yourself and others whether reason or emotion is running the show.

• **Remember that humor and a pleasant manner can go far in helping you make your points.** A belligerent attitude may prevent acceptance of your assertions. Be aware of how your body language can close you off from the group.

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Follow-up Form

Please take a few minutes to complete and return this follow-up form. Your answers will help us improve the Public Talk Series material and make it a more valuable resource.

1) Did you use *The Death Penalty in the United States*? ___ yes ___ no
If so, how? (check all that apply)
___ in a discussion group ___ for reference or research material ___ for lecture or classroom use

2) What did you think of the program?

	very good				poor
content	1	2	3	4	5
format	1	2	3	4	5
balance, fairness	1	2	3	4	5
suggestions for leaders	1	2	3	4	5
suggestions for participants	1	2	3	4	5
supplemental readings	1	2	3	4	5

3) Please answer the following if you held or were part of a discussion group.

Your role was ___ the organizer ___ the discussion leader ___ a participant

Who was the sponsoring organization (if any)? _____

How many attended? _____

Where was the program held? city _____ state _____

How many times did your group meet to discuss this topic? ___

Participants in this discussion group (check all that apply)
___ came together just for this discussion
___ hold discussions regularly
___ meet regularly, but not usually for issue-oriented discussion

Would you use study circles again? ____ yes ____ no

4) What future topics would you like to see in SCRC's Public Talk Series?

5) Other comments?

Name _____

Organization _____

Address _____

_____

_____

Phone _____

Please return to the Study Circles Resource Center, PO Box 203, Pomfret, CT 06258
or FAX to (203) 928-3713.
See reverse side for information on other Public Talk Series programs.

Public Talk Series Programs and Other Resources Available from the Study Circles Resource Center

Publications of the Study Circles Resource Center (SCRC) include the Public Talk Series (PTS); training material for study circle organizers, leaders, and writers; a quarterly newsletter; a clearinghouse list of study circle material developed by a variety of organizations; and a bibliography on study circles and small-group learning. Public Talk Series programs are available for $2.00 each. (You are welcome to order a single copy and then to photocopy as many as necessary for your group.) All other publications are free of charge.

Public Talk Series (PTS) (discussion programs on critical social and political issues)
___ *America's Role in the Middle East*
___ *American Society and Economic Policy: What Should Our Goals Be?*
___ *The Role of the United States in a Changing World*
___ *The Death Penalty*
___ *The Health Care Crisis in America* (expected late August, 1991)
___ *The Right to Die* (expected late August, 1991)

Pamphlets
___ "An Introduction to Study Circles." 20 pages.
___ "Guidelines for Organizing and Leading a Study Circle." 32 pages.
___ "Guidelines for Developing Study Circle Course Material." 32 pages.

Resource Briefs (single pages)
___ "What Is a Study Circle?"
___ "Leading a Study Circle"
___ "Organizing a Study Circle"
___ "The Role of the Participant"
___ "Developing Study Circle Course Material"
___ "What Is the Study Circles Resource Center?"
___ "The Study Circles Resource Center Clearinghouse"

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